Supreme Court, U.S.
FILED
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No. 91-6382

In The

# Supreme Court of the United States

October Term, 1991

ROBERT WAYNE SAWYER,

*Petitioner,*

vs.

JOHN P. WHITLEY, WARDEN,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## JOINT APPENDIX
## VOLUME II

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**Petition For Certiorari Filed November 13, 1991**
**Certiorari Granted November 14, 1991**

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**Robert Wayne SAWYER,**
**Petitioner-Appellant,**

**v.**

**John WHITLEY, Warden, Louisiana State Penitentiary, Respondent-Appellee.**

**No. 91-3658.**

United States Court of Appeals,
Fifth Circuit.

Oct. 10, 1991.

Petitioner filed first petition for writ of habeas corpus in federal court after he was convicted of capital murder and the Louisiana Supreme Court, 442 So.2d 1136, affirmed. The United States District Court for the Eastern District of Louisiana, Henry A. Mentz, Jr., J., denied petition and appeal was taken. The Court of Appeals, 848 F.2d 582, affirmed. On grant of rehearing en banc, the Court of Appeals, 881 F.2d 1273, affirmed. Certiorari was granted. The United States Supreme Court, 110 S.Ct. 2822, affirmed. Thereafter, second petition for federal habeas corpus relief was filed. The District Court, 772 F.Supp. 297, denied relief, and petitioner applied for certificate of probable cause. The Court of Appeals, King, Circuit Judge, held that: (1) in order to demonstrate actual innocence to permit court to consider merits of abusive claims that fail cause and prejudice requirement, as well as successive claim, petitioner must demonstrate, under all evidence that was and arguably could have been presented, that jury would not have been authorized to sentence him to death, and (2) petitioner failed to demonstrate actual innocence.

Affirmed.

Sarah L. Ottinger, Nicholas T. Trenticosta, R. Neal Walker, New Orleans, La., for Robert W. Sawyer.

Dorothy Ann Pendergast, Terry M. Boudreaux, Asst. Dist. Atty., Gretna, La., Annette Marie Viator, La. Dept. of Corr., Baton Rouge, La., for John P. Whitley.

Dana E. Parker, William C. Zapalac, Asst. Attys. Gen., Austin, Tex., for amicus State of Tex.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before KING, DAVIS and SMITH, Circuit Judges.

KING, Circuit Judge:

After granting Robert Sawyer a certificate of probable cause and a stay of execution, we review the merits of his second federal habeas petition. Sawyer presents one successive claim and two abusive claims in this second petition.[1] He repeats the claim that his counsel was ineffective in failing to present at the sentencing phase of his capital murder trial evidence of his mental impairment. We dismiss this successive claim because Sawyer fails to show that he is "actually innocent" of the death penalty. Sawyer contends for the first time in his second petition

[1] Sawyer presented three additional claims challenging the constitutionality of death by electrocution in Louisiana's electric chair in his application for a certificate of probable cause. On July 2, 1991, however, the Louisiana legislature amended its statute to require that every sentence of death executed on or after September 15, 1991, be by lethal injection. This change of law rendered these three claims moot.



(1) that he was incompetent to stand trial and (2) that the State withheld vital exculpatory evidence against him. We also dismiss these abusive claims because we find that Sawyer neither establishes cause and prejudice nor shows that he is actually innocent of his conviction or sentence. We affirm the district court's judgment dismissing Sawyer's request for habeas corpus relief and vacate his stay of execution.

## 1. BACKGROUND

A Louisiana state jury condemned Robert Sawyer to death in 1980 for the murder of Frances Arwood,[2] who was staying with Sawyer and Cynthia Shano, Sawyer's fiancee, and was helping to care for Shano's children. After a night of drinking, Sawyer and Shano returned to their home with an acquaintance, Charles Lane. Sawyer argued with Arwood and accused her of giving pills to one of Shano's children. The argument escalated to violence. Sawyer and Lane beat Arwood, scalded her with boiling water, and finally burned her scalded and unconscious body with lighter fluid.[3] She died several weeks later as a result of this vicious attack.

A state trial court convicted Sawyer of capital murder, and the Louisiana Supreme Court affirmed Sawyer's conviction and sentence of direct appeal. *See State v.*

[2] The details of Sawyer's horrifying crime have been recounted a number of times. *See, e.g., Sawyer v. State*, 442 So.2d 1136, 1136-37 (La. 1983).

[3] Lane was also convicted of first degree murder in a separate trial, but he received a sentence of life. *See State v. La[illegible]*, 414 So.2d 1223 (La. 1982).

*Sawyer*, 422 So.2d 95 (La. 1982). The United States Supreme Court vacated and remanded to the Louisiana Supreme Court for consideration of the sentence under *Zant v. Stephens*, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983). *See Sawyer v. Louisiana*, 463 U.S. 1223, 103 S.Ct. 3567, 77 L.Ed.2d 1407 (1983). On remand, the Louisiana Supreme Court again affirmed the conviction and sentence. *See State v. Sawyer*, 442 So.2d 1136 (La.1983). Sawyer filed a petition for state post-conviction review, and after an evidentiary hearing, the state trial court denied relief. Sawyer then sought a writ of habeas corpus in the Louisiana Supreme Court, which denied his application without written opinion. *See Sawyer v. Maggio*, 479 So.2d 360 (La. 1985).

In 1986, Sawyer filed his first petition for federal habeas corpus relief, raising eighteen claims, including ineffective assistance of counsel, all of which the court addressed on the merits and denied. A panel of this court affirmed that denial on appeal. *See Sawyer v. Butler*, 848 F.2d 582 (5th Cir. 1988).[4] We then granted rehearing *en banc* and upheld the panel's opinion. *See Sawyer v. Butler*, 881 F.2d 1273 (5th Cir. 1989) (*en banc*), *cert. granted*,

[4] On appeal, Sawyer raised only three challenges to his conviction and sentence: 1) whether he was denied effective assistance of counsel; 2) whether he was denied due process because the trial court failed to comply with a state law requiring that counsel assigned in a capital case must have been admitted to the bar at least five years; and 3) whether prosecutorial misconduct erroneously misled the jury as to its role in the death penalty determination. In addition, Sawyer challenged the district court's application of a prejudice requirement on the claim of prosecutorial misconduct.



___ U.S. ___, 110 S.Ct. 835, 107 L.Ed.2d 830 (1990). The United States Supreme Court affirmed.[5] *See Sawyer v. Smith*, ___ U.S. ___, 110 S.Ct. 2822, 111 L.Ed.2d 193 (1990).

Sawyer next filed a second state post-conviction petition. On October 5, 1990, the state trial court summarily denied Sawyer's application as repetitive and without merit. The Louisiana Supreme Court denied Sawyer's supervisory writ without opinion on October 7, 1990.

On October 8, 1990, Sawyer filed his second petition for federal habeas corpus relief. The district court granted a stay of execution, and, following an evidentiary hearing, rejected one of Sawyer's claims on the merits and the remaining claims as barred under Rule 9(b) of the Rules Governing Section 2254 Cases, 772 F.Supp. 297. The district court also vacated its stay of execution and denied a certificate of probable cause to appeal. Sawyer applied to this court for a certificate of probable cause. We granted the certificate on the ground that his case presented a question which is debatable among jurists of reason and has not yet been fully addressed in this circuit: what it means to be "actually innocent" of the death penalty in

[5] The Court considered only whether a prisoner whose murder conviction became final before the decision in *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985), which prohibits the imposition of a death sentence where the prosecutor's closing arguments diminished the jury's sense of responsibility for imposing a capital sentence, is entitled to use that decision to challenge his capital sentence in a federal habeas corpus action. The Court ruled that he could not, because *Caldwell* announced a new rule and did not come within the exception for rules necessary for fundamental fairness of the criminal proceeding.

determining whether to entertain a successive claim or an abusive claim that fails to meet the cause and prejudice requirement.

## II. ANALYSIS

### *A. Standard of Review*

Because this is Sawyer's second federal habeas petition, we first must determine whether we can reach the merits of his claims. *See* 28 U.S.C. § 2244(b) (1988); Rule 9(b) of Rules Governing Section 2254 Cases (constraining the ability of federal courts to entertain the merits of subsequent or successive claims). When a condemned prisoner presents successive petitions for a writ of habeas corpus, the state has a legitimate interest in preventing the prisoner from abusing the writ and using successive petitions as a mere delaying tactic. If the petitioner raises a claim that a federal court has already considered in a previous habeas corpus petition, we may review the merits of the successive claim only when "the prisoner supplements his constitutional claim with a colorable showing of factual innocence." *Kuhlmann v. Wilson*, 477 U.S. 436, 454, 106 S.Ct. 2616, 2627, 91 L.Ed.2d 364 (1986) (plurality opinion); *see also McCleskey v. Zant*, ___ U.S. ___, ___, 111 S.Ct. 1454, 1470, 113 L.Ed.2d 517 (1991); *Williams v. Lynaugh*, 837 F.2d 1294, 1295 (5th Cir. 1988); *cert. denied*, 492 U.S. 925, 109 S.Ct. 3260, 106 L.Ed.2d 605 (1989).

If the petitioner raises a new claim in a second or successive habeas petition, we may review that claim on the merits only if the petitioner's failure to raise the claim in the prior petition was not due to inexcusable neglect. *See Moore v. Butler*, 819 F.2d 517, 519 (5th Cir.), *cert. denied*,



482 U.S. 920, 107 S.Ct. 3201, 96 L.Ed.2d 688 (1987) (quoting *Jones v. Estelle*, 722 F.2d 159, 163 (5th Cir. 1983) (*en banc*), *cert. denied*, 466 U.S. 976, 104 S.Ct. 2356, 80 L.Ed.2d 829 (1984)). The state bears the burden of pleading abuse of the writ. *See id.* Once the state has met its burden of pleading, the petitioner must disprove that he has abused the writ by showing cause for failure to bring the claim in the first federal habeas petition, and actual prejudice that results from the errors that gave rise to the claim. *McCleskey*, 111 S.Ct. at 1470.

In order to demonstrate cause, the petitioner must show that the failure to raise the claim in his first petition was due to some objective external factor such as interference by officials. *Id.* (quoting *Murray v. Carrier*, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645, 91 L.Ed.2d 397 (1986)). The court must examine "whether petitioner possessed, or by reasonable means could have obtained, a sufficient basis to allege a claim in the first petition and pursue the matter through the habeas process." *Id.* ___ U.S. at ___, 111 S.Ct. at 1472. "Omission of the claim will not be excused merely because evidence discovered later might also have supported or strengthened the claim." *Id.* Prejudice requires a showing of actual prejudice amounting to a denial of fundamental fairness. *Carrier*, 477 U.S. at 494, 106 S.Ct. at 2648.

A court need not consider whether there is actual prejudice to the petitioner when he fails to show cause. *McCleskey*, ___ U.S. at ___, 111 S.Ct. at 1474 (citing *Carrier*, 477 U.S. at 494, 106 S.Ct. at 2648). "If the petitioner cannot show cause, the failure to raise the claim in an earlier petition may nonetheless be excused if he or she can show that a fundamental miscarriage of justice would

result from a failure to entertain the claim." *Id.* ___ U.S. at ___, 111 S.Ct. at 1470. A "fundamental miscarriage" implies that the "constitutional violation has probably resulted in the conviction of one who is actually innocent." *Carrier*, 477 U.S. at 496, 106 S.Ct. at 2649. *McCleskey* harmonized the *Kuhlmann* "colorable showing of factual innocence" requirement with the "actual innocence" that a petitioner must show to avoid the cause and prejudice requirement for abusive claims. Thus, a showing of actual innocence triggers our authority to consider the merits of abusive claims that fail the cause and prejudice requirement as well as successive claims.

### B. *The Actual Innocence Exception*

The Supreme Court first considered actual innocence as a limitation on hearing successive federal habeas petitions in *Kuhlmann*, which sought to clarify this "ends of justice" requirement implicit in 28 U.S.C. § 2244(b),[6] which restricts a federal court's authority to review the merits of a successive claim. In balancing a prisoner's interest in testing the constitutionality of his confinement

[6] *Sanders v. United States*, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963) drew the "ends of justice" limitation from the version of 28 U.S.C. § 2244 in effect at that time. *Kuhlmann*, 477 U.S. at 448, 106 S.Ct. at 2624. The current version of the statute explicitly incorporates the phrase into subsection (a), which deals with federal prisoners, but not into subsection (b), which deals with state prisoners. *See* 28 U.S.C. § 2244(a)-(b) (1988). Nonetheless, *Kuhlmann*, holds that § 2244(b) continues to require an "ends of justice" inquiry because of the limited discretion it still affords to federal courts presented with successive state claims. *See* 477 U.S. at 451, 106 S.Ct. at 2625.



against the state's interest in the administration of its criminal statutes, and particularly in the finality of its judicial decisions, a four-Justice plurality determined that the ends of justice required "federal courts to entertain such petitions only where the prisoner supplements his claim with a colorable showing of factual innocence." The *Kuhlmann* plurality drew from Judge Friendly's seminal article on federal habeas review[7] and *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in articulating a standard for assessing factual, or actual, innocence:

> [T]he prisoner must show a fair probability that, in light of all of the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongfully excluded or to have become available only after trial, the trier of fact would have entertained a reasonable doubt as to his guilt.

*Kuhlmann*, 477 U.S. at 455 n. 17, 106 S.Ct. at 2627 n. 17 (quoting Friendly, *supra* note 7, at 160).

On the same day *Kuhlmann* was decided, the Supreme Court also considered two habeas cases presenting abusive claims. A petitioner ordinarily must demonstrate cause for his abuse of the writ and prejudice resulting from the alleged constitutional error before a federal court can address the merits of a claim brought for the first time in a second habeas petition. A majority held that a showing of actual innocence would excuse a

[7] Henry J. Friendly, *Is Innocence Irrelevant: Collateral Attack on Criminal Judgments*, 38 U.Chi.L.Rev. 142 (1970).

petitioner from the cause and prejudice requirement. *See Murray v. Carrier*, 477 U.S. 478, 495-96, 106 S.Ct. 2639, 2649, 91 L.Ed.2d 397 (1986); *Smith v. Murray*, 477 U.S. 527, 537-38, 106 S.Ct. 2661, 2667-68, 91 L.Ed.2d 434 (1986). The Court reasoned that "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent," failure to consider a procedurally defaulted habeas claim would result in a "fundamental miscarriage of justice." *Carrier*, 477 U.S. at 495-96, 106 S.Ct. at 2649.

*Smith* specifically considered the application of this exception in the capital sentencing context. The *Smith* Court acknowledged that "the concept of 'actual', as distinct from 'legal' innocence does not translate easily into the context of an alleged error at the sentencing phase of a trial on a capital offense." 477 U.S. at 537, 106 S.Ct. at 2668. Nonetheless, the Court decided that Smith's claim did not fall within the actual innocence exception, because, as the alleged error neither introduced false facts nor precluded the development of true ones, it did not prevent even "the risk of a manifest miscarriage of justice." *Id.* at 538, 106 S.Ct. at 2668.

In arriving at this conclusion, the Court focused specifically on whether the allegedly erroneous admission of the psychiatrist's testimony undermined the accuracy of the jury's factual finding that Smith was a continuing threat to society, a statutory aggravating circumstance. The Court assumed that the challenged evidence had been improperly admitted, and that but for its admission, the jury probably would have imposed a life sentence instead of death. *Id.; see also Johnson v. Singletary*, 938 F.2d 1166, 1182 (11th Cir. 1991) (en banc) (observing that *Smith*



Court assumed that Smith was "legally innocent"). In analyzing Smith's claim, the Court asked "whether *in fact* petitioner constituted a continuing threat to society." *Smith*, 477 U.S. at 538, 106 S.Ct. at 2668. The way that the Court framed this question indicates that an inquiry into accuracy was relevant specifically because the challenged finding of fact, if incorrect, could have led the jury to err in finding Smith guilty of an aggravating circumstance under Virginia law.

The Court's ultimate refusal to consider Smith's claim on the merits also indicates the necessary content of a showing of actual innocence of the death penalty. Virginia requires the jury to find at least one aggravating circumstance before it can recommend a death sentence. *See Briley v. Bass*, 584 F.Supp. 807, 840 (E.D.Va.), *aff'd*, 742 F.2d 155 (4th Cir.), *cert. denied*, 469 U.S. 893, 105 S.Ct. 270, 83 L.Ed.2d 206 (1984). If Smith had challenged both of the aggravating circumstances that the jury found to recommend his death sentence, the jury could have imposed a sentence of which Smith was actually innocent, because the absence of both of the statutory aggravating circumstances would have prevented the jury from imposing the death penalty as a matter of state law. In dismissing Smith's claim, the Court seems to have implied that a claim that challenged only one aggravating circumstance was "unrelated to [actual] innocence," and thus failed to present the risk of a fundamental miscarriage of justice. *See* 477 U.S. at 539, 106 S.Ct. at 2669; *accord Johnson*, 938 F.2d at 1182 (en banc).

In cases following *Smith*, the Supreme Court has continued to adhere to the view that actual innocence requires more than showing a constitutional error, even

one that results in the admission of false or misleading facts, and even if the verdict or sentence would have been different absent the error. In *Dugger v. Adams*, 489 U.S. 401, 109 S.Ct. 1211, 103 L.Ed.2d 435 (1989), the Court implied that a petitioner does not show actual innocence by raising a claim that affects the fundamental fairness or the accuracy of a proceeding even if it presents a likelihood that the error actually influenced the sentence imposed. The Court observed that while "the trial judge in this case found an equal number of aggravating and mitigating circumstances," this fact was insufficient to show that an error in sentencing instructions caused a fundamental miscarriage of justice. *Id.* at 412 n. 6, 109 S.Ct. at 1217-18 n. 6. In the same discussion, the majority criticized as overbroad Justice Stevens' miscarriage of justice occurs whenever "there is a substantial claim that a constitutional violation undermined the accuracy of the sentencing decision." *Id.* at 423, 109 S.Ct. at 1223-24 (Stevens, J., dissenting).

This past term, the Court again recognized the actual innocence exception in *McCleskey*, in the context of abusive claims. *McCleskey* reiterated that a fundamental miscarriage of justice is shown only in those "extraordinary instances when a constitutional violation probably has caused the conviction of one innocent of the crime." ___ U.S. at ___, 111 S.Ct. at 1470 (citing *Carrier*). After observing that the fundamental miscarriage of justice exception "gives meaningful content to the otherwise unexplained 'ends of justice' inquiry" mandated by *Sanders*,[8] the Court embraced the *Kuhlmann* plurality's

[8] 373 U.S. 1, 15-17, 83 S.Ct. 1068, 1077-78, 10 L.Ed.2d 148 (1963).



"factual innocence" inquiry as to the primary source of this content. *See id.* ___ U.S. at ___, 111 S.Ct. at 1471.

Although this circuit has addressed claims involving the actual innocence exception in the sentencing context before, we have not yet endeavored to define it precisely.[9] In *Cuevas v. Collins*, 932 F.2d 1078 (5th Cir. 1991), we held that the petitioner did not come within the exception, and merely observed that his claim did not present "sufficient risk of an erroneous sentence as to implicate actual innocence." *Id.* at 1083. We addressed the issue in two other cases, but found again that the weak factual support for those claims did not compel a considered analysis of the exception.[10]

At this juncture, we believe that it is helpful to set forth a standard for assessing whether successive and abusive claims qualify for this rare exception. We extract the standard from Supreme Court case law, examine the rationale supporting it, and apply it to this case.

One can fairly view with skepticism the proposition that a convicted defendant can be actually innocent of a sentence which is normally left to the discretion of the judge virtually free of substantive control or guidance. But the Supreme Court has recognized that in an important and controlling respect, a death sentence is different from any other kind of sentence. The Supreme Court has

[9] We have considered the application of the exception in the guilt-innocence phase. *See, e.g., United States v. Shaid*, 937 F.2d 228, 232-36 (5th Cir. 1991) (en banc).

[10] *See Jones v. Whitley*, 938 F.2d 536 (5th Cir. 1991); *Bird v. Collins*, 934 F.2d 629 (5th Cir. 1991).

held that in order to comply with the Eighth Amendment, a death sentence must be imposed under a structure that specifically narrows the circumstances under which it may be imposed. *E.g., Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Proffitt v. Florida*, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976); *Jurek v. Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976); *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976).

Many states, including Louisiana, have complied with the Court's construction of the Eighth Amendment by adopting statutes that set forth certain aggravating circumstances, at least one of which must be found before the jury is authorized to impose the death penalty. As the Court recognized in *Bullington v. Missouri*, 451 U.S. 430, 101 S.Ct. 1852, 68 L.Ed.2d 270 (1981), with respect to the Missouri death penalty statute, "[b]y enacting a sentencing procedure that resembles a trial on the issue of guilt or innocence, Missouri *explicitly requires* the jury to determine whether the prosecution has 'proved its case.' " *Id.* at 446, 101 S.Ct. at 1862 (emphasis in the original). Because of the similarity between a trial on guilt or innocence and a capital sentencing proceeding, the Court held that the protection afforded by the Double Jeopardy Clause to one acquitted by a jury is also available at his retrial to one who has earlier been, in effect, acquitted of a death penalty. *Id.* We think that the Court's willingness in *Smith* to consider Smith's claim that he was actually innocent of his death sentence is premised on the distinction that the Court drew in *Bullington* between a death sentence and other sentences, and that distinction



informs our view as to the content of the standard we set forth today.

Justice Powell's cogent dissent in *Bullington* did not necessarily disagree with the majority's explanation of capital sentencing. Instead, Justice Powell chose to emphasize the inherent difference between reviewing the validity of the sentencing phase and that of the guilt-innocence phase of a criminal trial:

> Underlying the question of guilt or innocence is an objective truth: the defendant, in fact, did or did not commit the acts constituting the crime charged. From the time an accused is first suspected to the time the decision on guilt or innocence is made, our criminal justice system is designed to enable triers of fact to discover that truth according to law. But triers of fact can err, and an innocent person can be pronounced guilty. In contrast, the law provides only limited standards for assessing the validity of a sentencing decision. The sentencer's function is not to discover a fact, but to mete out just deserts as he sees them. Absent a mandatory sentence, there is no objective measure by which the sentencer's decision can be deemed correct or erroneous *if it is duly made within the authority conferred by the legislature.*

*Id.* at 450, 101 S.Ct. at 1864 (1981) (Powell, J., joined by Burger, C.J., and White and Rehnquist, JJ., dissenting) (emphasis added). Both the majority and the dissent in *Bullington* guide our analysis. The similarities between a guilt-innocence determination and a capital sentencing decision allow us to translate actual innocence into the sentencing phase; the differences inform the manner in

which we review a claim of actual innocence of a capital sentence.

A claim of actual innocence must do more than "call into question the reliability of an adjudication of legal guilt," *Carrier*, 477 U.S. at 495, 106 S.Ct. at 2649, or here, the reliability of the jury's imposition of the death penalty. *See Adams*, 489 U.S. at 412 n. 6, 109 S.Ct. at 1217-18 n. 6. It must challenge the facts which triggered the jury's authority to impose the death penalty. In assessing when a habeas petitioner can be actually innocent of the crime of which he was convicted, the plurality in *Kuhlmann* focused on whether the petitioner had shown a fair probability that, in the light of all the evidence, the trier of fact would have entertained a reasonable doubt as to his guilt.[11] Translating *Kuhlmann's* guilt-innocence phase test to the sentencing phase, then, we must require the petitioner to show, based on the evidence proffered plus all record evidence, a fair probability[12] that a rational trier of

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[11] The *Kuhlmann* plurality incorporated Judge Friendly's proposal in articulating this standard. *See* 477 U.S. at 455 n. 17, 106 S.Ct. at 2627 n. 17 (specifying that "all of the evidence" includes " 'that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial' " (quoting Friendly, *supra* note 7, at 160)).

[12] The use in *Kuhlmann* and succeeding Supreme Court cases, and our use, of the term "fair probability" as an indication of the threshold that petitioner must reach does not in any way detract from the premise of *Jackson* that the evidence is sufficient so long as a rational juror can find a pathway through all the evidence to convict (or, as here, sentence) the

(Continued on following page)



fact[13] would have entertained a reasonable doubt as to the existence of those facts which are prerequisites under state or federal law[14] for the imposition of the death

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defendant. Under *Jackson*, a trier of fact is free to choose among reasonable constructions of the evidence. *United States v. Bell*, 678 F.2d 547, 549 (5th Cir.1982) (en banc), *aff'd on other grounds*, 462 U.S. 356, 103 S.Ct. 2398, 76 L.Ed.2d 638 (1983).

[13] We have used the term "trier of fact" consistently throughout this opinion, and recognize that usually the jury is the trier of fact. Depending on how a state allocates the responsibility for complying with its own as well as federal requirements in its death sentencing scheme, however, the jury, trial judge, or appellate court may have shared or independent obligations to ensure that death sentence is imposed in accordance with state or federal law. In some circumstances, a trial judge or an appellate reviewing body alone may bear the responsibility for determining the existence of one or more facts that must be found under state or federal law before the death sentence can be imposed. In an instance dealing with such a determination, the inquiry would be whether the body vested with the responsibility for making that determination in the first instance probably would have entertained a reasonable doubt as to the fact that it is required to determine. *See, e.g., Enmund v. Florida*, 458 U.S. 782, 801, 102 S.Ct. 3368, 3378-79, 73 L.Ed.2d 1140, 1154 (1982) (reversing Florida Supreme Court decision to affirm death sentence absent trial court finding that accomplice, who did not kill or attempt to kill, intended killing or use of lethal force); *Gregg v. Georgia*, 428 U.S. 153, 191-92, 204-05, 96 S.Ct. 2909, 2933-34, 2939-40, 49 L.Ed.2d 859 (1976) (plurality) (indicating that sentencing authority can be allocated to either court or jury, and holding that state supreme court's capital sentence review procedure assisted in preserving the constitutionality of the state sentencing scheme).

[14] There are several circumstances under which the death penalty is unavailable as a matter of constitutional law. *See,*

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penalty.[15] That is, a petitioner is not actually innocent of the death penalty unless he demonstrates, under all the

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*e.g., Thompson v. Oklahoma*, 487 U.S. 815, 857-78, 108 S.Ct. 2687, 2711, 101 L.Ed.2d 702 (1988) (O'Connor, J., concurring) (persons under 16 years of age when they commit capital offense cannot receive death penalty unless legislature clearly includes them by setting a lower minimum age); *Tison v. Arizona*, 481 U.S. 137, 157-58, 107 S.Ct. 1676, 1688, 95 L.Ed.2d 127 (1987) (minor participation in felony underlying felony murder conviction cannot support death penalty absent finding that defendant exhibited at least reckless disregard for human life); *Ford v. Wainwright*, 477 U.S. 399, 409, 106 S.Ct. 2595, 2602, 91 L.Ed.2d 335 (1986) (Constitution prohibits executing death sentences of insane persons for the duration of their insanity); *Coker v. Georgia*, 433 U.S. 584, 592, 97 S.Ct. 2861, 2866, 53 L.Ed.2d 982 (1977) (plurality) (rape conviction cannot serve as basis for death sentence).

[15] *See also Johnson*, 938 F.2d at 1183. In *Johnson*, the Eleventh Circuit recently proposed a standard to assess whether a petitioner is actually innocent of the death penalty:

> [A] petitioner may make a colorable showing that he is actually innocent of the death penalty by presenting evidence that an alleged constitutional error implicates *all* of the aggravating factors found to be present by the sentencing body. That is, but for the alleged constitutional error, the sentencing body *could not* have found *any* aggravating factors and thus the petitioner was ineligible for the death penalty. In other words, the petitioner must show that absent the alleged constitutional error, the jury would have lacked the discretion to impose the death penalty
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> . . . .

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evidence that was an arguably should have been presented, that the jury would not have been authorized to sentence him to death. *See Bullington*, 451 U.S. at 439, 101 S.Ct. at 1858 (distinguishing a death sentence proceeding from other sentencing procedures in which there is "no separate sentencing proceeding at which the prosecution [is] required to prove – beyond a reasonable doubt – additional facts in order to justify the particular sentence.")

*Jackson v. Virginia*, which provided the foundation for the *Kuhlmann* test, carefully limited the role of courts in conducting a sufficiency of the evidence review. *Jackson* directed the reviewing court to examine all of the evidence "in the light most favorable to the prosecution." 443 U.S. at 319, 99 S.Ct. at 2789. The Court explained that it imposed this requirement so that the review would "impinge[] on 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." *Id.* The Court further reasoned:

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*Id.* (emphasis in original). The test we set forth here emerges from the same fundamental concerns discussed by the *Johnson* en banc majority. In devising a framework for reviewing actual innocence of the death penalty, we recognize that the broad discretion afforded to sentencing bodies under both federal and state law leaves few objective criteria upon which we can decide whether a sentencer had the authority to impose the death penalty. *See id.* Our test also recognizes that both state and federal requirements imposed on death penalty schemes affect the inquiry into actual innocence of the death sentence. *See id.* at 1186, 1191, 1194-95 (Tjoflat, C.J., concurring and dissenting).

> The question of whether the evidence is constitutionally sufficient is of course wholly unrelated to the question of how rationally the verdict was reached. Just as the standard announced today does not permit a court to make its own subjective determination of guilt or innocence, it does not require scrutiny of the reasoning process actually used by the fact finder – if known.

*Id.* n. 13. The core concern of the *Jackson* Court, in designing the sufficiency review, was to insulate the discretionary function of the jury from judicial scrutiny. This concern constrains our review of a claim of actual innocence of a capital sentence to only those facts which provide the predicate for the jury's authority to assess the death penalty.

Like the petitioner in *Smith*, Sawyer maintains that his claims, if true, would render him innocent of the death penalty.[16] Therefore, we must consider, based on

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[16] Sawyer urges us to apply a test that first would inquire into whether the alleged constitutional violations in the sentencing phase of his trial "precluded the development of true facts [or] resulted in the admission of false ones." (quoting *Smith*, 477 U.S. at 538, 106 S.Ct. at 2668). He would then have us ask whether there is a fair probability that, but for this alleged error, the trier of fact would not have imposed the death penalty. We do not believe that this test accurately interprets the meaning of actual innocence as presented in *Smith* and cases following. It is true that the *Smith* majority concluded that refusal to consider the merits of Smith's claim would not pose the *risk* of a fundamental miscarriage of justice because the alleged error neither caused the admission of false facts nor precluded the development of true ones. *See* 477 U.S.

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the new evidence he presents viewed in conjunction with all of the evidence admitted in the trial court, whether a fair probability exists that a rational trier of fact would have entertained a reasonable doubt as to the existence of any of those facts which are prerequisites under Louisiana or federal law to the imposition of his death penalty. In order to assess how a rational trier of fact would view the newly proffered evidence, we must understand how

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at 538, 106 S.Ct. at 2668. It is clear, however, that the Court did not intend *Smith* to stand for the converse proposition – that the admission of false facts or the omission of true facts would end the inquiry into whether a petitioner is actually innocent of the death penalty. *Adams* explains that actual innocence requires *more* than a showing that a constitutional violation undermined the accuracy of the sentencing decision. *See* 489 U.S. at 412 n. 6, 109 S.Ct. at 1217-18 n. 6; *see also Johnson*, 938 F.2d at 1182 (factual inaccuracy "may well be necessary to a claim of actual innocence," but is insufficient unless that inaccuracy affects the sentencer's authority to impose the death penalty). Because the test that Sawyer proposes would make actual innocence indistinguishable from a showing of actual prejudice, and thereby turn the exceptional case into an "all too ordinary one," *id.*, we do not adopt it. *See Carrier*, 477 U.S. at 495, 106 S.Ct. at 2649 (clearly distinguishing between actual innocence and actual prejudice, and re-emphasizing that a showing of actual prejudice without showing cause would not permit a court to review the merits of a procedurally defaulted habeas claim); *see also McCleskey*, 111 S.Ct. at 1474-75 (finding that because petitioner lacked cause, the court did not need to consider whether he "would be prejudiced by his inability to raise the alleged *Massiah* [*v. United States*, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964)] violation at this late date," and also concluding that petitioner could not "demonstrate that the alleged *Massiah* violation caused the conviction of an innocent person").

the state statute directs the trier of fact to study the evidence.

Under the Louisiana capital sentencing scheme, the jury is authorized to assess the death penalty so long as it finds at least one statutory aggravating circumstance beyond a reasonable doubt. La. Code Crim.Proc.Ann. Art. 905.3 (West Supp.1991) After it so finds, the statute imposes a procedural requirement that the jury consider any mitigating circumstances before it assesses the death penalty. *Id.*[17] The statute provides a definitive list of aggravating circumstances, Art. 905.4, and a nonexhaustive list of mitigating circumstances. Art. 905.5; *see* 905.5(e) (providing for consideration of "[a]ny other relevant mitigating circumstance"). The finding of one or more mitigating circumstances does not foreclose the jury from imposing the death penalty in the presence of at least one aggravating factor. *See* Art. 905.3. Under the Louisiana scheme, therefore, a rational juror conceivably could choose to give no weight to any of the mitigating factors and impose the death penalty so long as it has found, beyond a reasonable doubt, the existence of a single aggravating circumstance.

It is clear, under the Louisiana scheme, that additional mitigation evidence cannot detract from the jury's ability to find any aggravating factor which supported its

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[17] *See also State v. Sonnier*, 380 So.2d 1, 8 (La.1979) (reversing death sentence in light of *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) and jury's "apparent disregard" of several mitigating factors).



imposition of the death penalty. The only factual prerequisite to assessing the death penalty imposed by Louisiana law that is relevant here is the finding of an aggravating circumstance beyond a reasonable doubt. In applying the *Jackson v. Virginia* standard of review to a Louisiana death sentence, therefore, we must ask whether a fair probability exists, in light of the evidence tendered to the court on this second habeas review, when examined in conjunction with all the record evidence, that a rational trier of fact would entertain a reasonable doubt as to the existence of each and every one of the aggravating circumstances found by the jury when it originally imposed the death penalty.[18]

Only by demonstrating that a fair probability exists that the jury could not have sentenced him, i.e., would not have been authorized to sentence him, to death as a matter of law can Sawyer show that he is actually innocent of the death penalty. The jury that recommended Sawyer's death sentence found

> (1) that [Sawyer] was engaged in the perpetration of aggravated arson; (2) that the offense was committed in an especially heinous, atrocious and cruel manner; (3) that [Sawyer] was previously convicted of an unrelated murder and sentenced defendant to death. On appeal,

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[18] Only aggravating factors predicate the jury's authority to assess the death penalty under Louisiana law. Therefore, if we were to entertain a claim based on mitigation evidence, we would be compelled to scrutinize the jury's deliberative process, an exercise that the *Jackson* Court explicitly forbade. *See* 443 U.S. at 319 n. 13, 99 S.Ct. at 2789 n. 13.

> this court found that the last aggravating circumstance was not supported by the evidence. . . .

*Sawyer v. State*, 442 So.2d 1136 (La.1983), *cert. denied*, 466 U.S. 931, 104 S.Ct. 1719, 80 L.Ed.2d 191 (1984). Therefore, in order to show actual innocence of the death penalty, Sawyer must demonstrate that his newly proffered evidence, when viewed in conjunction with the record evidence, would lead a rational trier of fact to entertain a reasonable doubt as to the findings of both aggravated arson and the "especially heinous, atrocious and cruel manner of death."

*C. Claim 1*

In his first claim, Sawyer alleges that he was denied effective assistance of counsel and an opportunity for a meaningful and individualized sentencing determination because his trial counsel failed to investigate mitigating evidence and to obtain expert mental health testimony and present such testimony at the sentencing phase of his trial in mitigation of the death penalty. Sawyer specifically raised this same ground for relief in his first habeas petition, and the claim was rejected on its merits. Sawyer now presents additional substantial evidence showing his organic brain damage, moderate mental retardation, and various other mental disorders, as well as childhood abuse and neglect. Specifically, Sawyer shows that he was hospitalized in four mental health facilities, that he received shock therapy, and that he was adjudicated incompetent by the State of Tennessee in



1967. Further, newly submitted mental evaluations suggest that Sawyer's organic brain damage impairs his ability to control his actions. Because Sawyer admits that he raised the claim of ineffective assistance of counsel at the sentencing phase in his prior petition and that it was rejected on the merits, he must supplement his claim by showing a fair probability that a rational trier of fact would have entertained a reasonable doubt as to the existence of those facts which are prerequisites under Louisiana and federal law for the imposition of the death penalty.

Sawyer asserts that the incompetence of his trial counsel resulted in the introduction of false and misleading facts and precluded the development of true facts concerning his mental status and psychological background. These factual inaccuracies, he claims, foreclosed the jury from considering a statutory mitigating circumstance that should have been applied to his case.[19] Sawyer contends that but for these errors of trial counsel, the

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[19] The relevant mitigating circumstance is as follows:

> At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication[.] La.Code Crim.Proc.Ann. art. 905.5(e).

As the State of Louisiana points out, Sawyer did present a defense of toxic psychosis due to alcohol ingestion when he was tried. He did not, however, raise the issue of his organic brain disorder in his initial trial. Either or both of these defenses, if accepted by the jury, would qualify for this statutory mitigating circumstance.

outcome of the jury's sentencing deliberations would have been different.

Under Louisiana law, mitigation evidence, without more, cannot suffice to demonstrate that a petitioner is actually innocent of the death penalty. Because this evidence does not implicate the validity of the two aggravating circumstances which the jury found in order to impose Sawyer's death sentence, a rational trier of fact still could have recommended the death sentence. Consequently, we must reject this claim as successive without addressing its merits.

*D. Claim 2*

In his second claim, Sawyer alleges that the issue of his competence to stand trial, although raised at the time of his trial, was not adequately resolved because the sanity commission rendered an incompetent evaluation. Because Sawyer raises this claim for the first time in his second petition for habeas corpus, we may consider it only if he has not abused the writ. Sawyer does not contend that the government or some other external factor obstructed his ability to raise the issue of his incompetency to stand trial in his first federal habeas petition. Sawyer admits that he had been adjudicated incompetent on two separate occasions before he stood trial, and that he had been diagnosed as having moderate retardation and chronic brain syndrome as early as 1965. This type of information could have been discovered through reasonable investigation at or before the time the first habeas petition was filed. We agree with the district court that



Sawyer fails to show cause for not raising this claim in his first habeas petition.

Sawyer urges us to consider incompetency to stand trial as equivalent to being actually innocent of his conviction and sentence. Essentially, Sawyer is contending that the allege Fourteenth Amendment due process violation that caused him to stand trial despite his mental incompetency yields a showing of actual innocence because, but for the constitutional error, he would not have been convicted and sentenced. He does not, however, argue that he was actually innocent of the murder, or of any of the facts which led the jury to find the two valid statutory aggravating circumstances. Since Sawyer does not challenge the critical factual bases for his conviction or sentence, we dismiss this claim without addressing its merits.

*E. Claim 3*

In his final claim, Sawyer alleges that the State hid exculpatory evidence in violation of Sawyer's rights under the Sixth, Eighth, and Fourteenth Amendments. Sawyer asserts that despite a pre-trial request for "any exculpatory evidence favorable to the defendant," the State concealed that: 1) its key witness, Cynthia Shano, was promised immunity in exchange for her testimony; 2) Wayne Shano, the four-year-old son of Cynthia Shano, told a police detective that Sawyer did not set Arwood on fire and tried to stop Lane from doing so; 3) Cynthia Shano knew Charles Lane prior to the commission of the crime; 4) Cynthia Shano lied when she testified at trial that she does not drink; and 5) the police discovered

another can of lighter fluid near the house the day after the crime was committed.[20]

Sawyer did not raise this claim in his first petition, and the district court rejected the claim because it determined that Sawyer failed to show cause for this omission. Sawyer's claim rests on hearsay statements recalling incidents that happened ten years ago. He does not present a convincing argument that the State obstructed his counsel from deposing these witnesses wither at the time of his criminal trial or his first habeas petition. Indeed, since the State opened its files to Sawyer's counsel when he filed his first federal habeas petition, he cannot assert that any external obstacle barred his access to this information.

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[20] Sawyer submits seven affidavits to support his allegation that Shano was promised immunity. The affiants declare that Shano either told them or told someone else who repeated to them that she made a deal with the State to testify against Sawyer in order to save herself. Another affidavit supports Sawyer's allegation that Wayne Shano exculpated Sawyer. Diane Thibodeaux, a close friend of Cynthia Shano, states in her affidavit that she was present when the police detective interviewed Wayne Shano, and that Wayne said "Daddy tried to help the lady" [Wayne Shano called Robert Sawyer "Daddy", but Sawyer was not Wayne's father.] and that the "other man" had lit Arwood on fire. A 1981 letter from William Rausch to Shano supports Sawyer's claim that Cynthia Shano knew Charles Lane prior to the murder. Rausch wrote the letter while he was a prisoner at the Jefferson Area Community Correction Center. Rausch wrote that he spoke with Charles Lane in prison and Lane indicated that he was a good friend of Shano's. Finally, Sawyer's claim that Shano lied on the stand about her drinking rests solely on the prosecutor's handwritten notes for his direct examination of Detective Geiling which indicate that the investigating detective smelled the odor of alcohol on Shano.



Because the State did not prevent Sawyer from having access to the statements and other materials on which he now bases his claim, he does not show that he could not have obtained, by reasonable means, "a sufficient basis to allege a claim in the first petition and pursue the matter through the habeas process." *McCleskey*, 111 S.Ct. at 1470.

Nor does this evidence raise a fair probability that a rational trier of fact would have entertained a reasonable doubt as to whether to sentence Sawyer to death. Sawyer has not raised any specific facts to show that he is innocent either of the murder of Arwood or of both of the valid aggravating circumstances the jury found before recommending the death penalty. Although some of the evidence might implicate the jury's finding of aggravated arson,[21] it would not lead a rational trier of fact to entertain a reasonable doubt as to the jury finding that the murder of Frances Arwood was committed "in an especially heinous, atrocious and cruel manner." The jury could have looked to circumstances surrounding

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[21] We assume only for purposes of argument that Sawyer's evidence asserts a valid challenge to this jury finding. We observe, however, that Sawyer need not have been the actual perpetrator of the aggravated arson for a jury to find him guilty of that crime. *See La.Rev.Stat.Ann.* art. 14:24 (West 1986) (defining principals of a crime as all persons who aid and abet in the commission of a crime, whether directly or indirectly). He does not contend that he was not present while Frances Arwood was being burned. Furthermore, he does not deny that his fingerprints were found on a can of lighter fluid at the crime scene, a fact which the jury considered in finding aggravated arson.

Arwood's brutal murder other than those giving rise to arson to make this finding.[22]

Moreover, Sawyer's effort to attack the credibility of Cynthia Shano, the State's star witness, would not lead a rational trier of fact to entertain a reasonable doubt as to his guilt of the crime or either of the statutory aggravating circumstances underlying his sentence. Regardless of the evidence now presented, the jury still would have retained the discretion to credit Shano's testimony. This evidence does not implicate any of the findings of fact which entitled the jury to convict and sentence Sawyer to death as a matter of law. We cannot say that this newly tendered evidence of bias, when viewed in conjunction with the evidence presented at trial, would lead a rational juror to entertain a reasonable doubt about whether to convict or sentence Sawyer to death. As a result, we dismiss this claim.

## III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's judgment dismissing Sawyer's request for habeas corpus relief and VACATE his stay of execution.

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[22] As recounted above, Sawyer beat and scalded Arwood with boiling water. *See also Sawyer v. State*, 442 So.2d 1136, 1140 (La.1983) (pointing to "overwhelming evidence of the heinous nature of the principal offense" in affirming Sawyer's sentence). Nothing Sawyer adduces now contradicts the fact that he participated in torturing Arwood.



STATE OF LOUISIANA
VERSUS
ROBERT SAWYER

FILED: ___

24th JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA
NO. 79-2841
SECTION: G

DEPUTY CLERK

MOTION TO APPOINT SANITY COMMISSION AND TO ORDER MEDICAL OBSERVATION AND TESTS

On the motion of the undersigned attorney for Robert Sawyer, appearing herein for the sole purpose of moving the Court to order a medical examination of the defendant and such tests are tests, including but not limited to the following: a brain scan test, which will enable medical experts to determine the lack of mental capacity or the extent of medical capacity of the defendant for the following grounds to wit:

The defendant, Robert Sawyer, does not understand the nature of this act, nor was he aware of the difference between right and wrong and he is unable to assist his attorney in his defense.

Further there should and ought to be a sanity commission appointed in accordance with the Code of Criminal Procedure, Article 641 et sec for the purpose of a determination of the defendant's competency towards his counsel and his defense.

/s/ James S. Weidner, Jr.
JAMES S. WEIDNER, JR.
TOOLEY, WALDMANN

AND WEIDNER
743 Terry Parkway
Gretna, Louisiana 70053

ORDER

The foregoing motion considered, let a mental examination of the above named defendant be had forthwith, such mental examination to include such tests are are [sic] suggested by such medical experts. Further, let a sanity commission be appointed herein for the purpose of examining and reporting the mental conditions of the defendant, including but not limited to the defendant's competence to assist counsel in his defense and defendant's sanity at the time of the alleged crime.

Let the following doctors be appointed as members to the sanity commission, to wit:

Dr. DeVillier;

Dr. Arneson; and Dr. Frank

Dr. ___

These doctors are to report to this Court on the 5th day of June, 1980, the results of their examination and the findings of their tests and give their opinions.

Gretna, Louisiana, this day of 29th May, 1980.

/s/ Charles Gaudin
JUDGE

PLEASE SERVE:

THE DISTRICT ATTORNEY FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA

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*Genevieve A. Arneson, M.D., Illegible*
1011 FOURTH STREET
GRETNA, LA. 70053

TELEPHONE 367-0919

June 9, 1980

The Honorable Judge Charles Gaudin
Division G
24th Judicial District Court
Parish of Jefferson
Gretna, Louisiana

Re: Robert Sawyer

Dear Judge Gaudin:

Following is a psychiatric evaluation on Robert Sawyer, as requested by the Court recently in connection with a Sanity Hearing to be held June 12, 1980. The subject was examined at the Jefferson Parish prison on June 2, 1980.

The subject is a 29 year old Caucasian male resident of Gretna, Louisiana. He is originally from Memphis, Tennessee and has been in the New Orleans area since 1978. He is a widower, his wife was killed in an automobile accident in 1971. He has a 10 year old son who lives back in Tennessee. His occupation he gives as a deckhand working on the Mississippi River. He says he has an 8th grade education, left school at 14 years of age because he had to go to work. He also had a good bit of learning difficulties and was in special education classes. He states that he was hospitalized one time in a psychiatric unit and placed on lithium in 1966. He remained in the hospital for three months. He was told that he was "too active." He states that his mother committed suicide by

gunshot wound when he was three months of age. He was raised by his paternal grandmother.

Subject states he has been in prison for 8 months, arrested 18, 1979, and charged with first degree murder. He states that the individual he is alleged to have murdered did not expire until November 21, 1979. When asked about the charges the subject launched into a long detailed, overly inclusive story about the circumstances leading up to the alleged offense. He claims that he was angry at this woman who was babysitting for his girlfriend's children, after he discovered that she had been giving the children drugs. He also states that at the time of the alleged offense he was inebriated with a cheap wine called "Mad Dog 20-20." He states "that will make you crazy." He states that the events surrounding that time are known to him only in "bits and pieces."

MENTAL STATUS EXAMINATION: The subject presents as a small 29 year old Caucasian male. he is 5 ft. 2 in. tall, weighs 136 lbs. His appearance is marred by a facial defect in the left ocular area and a prosthetic left eye which tears frequently. He has straight black hair, hazel eyes, poor dentition, a slight degree of prognathism. Affect is rather flat as he describes horrendous events in an offhand manner. As noted, he goes into extreme detail, overly inclusive, and has difficulty reaching his goal idea. Thinking is simple and concrete. No evidence of hallucinations or gross delusions at this examination. Intelligences is estimated as low-average or borderline.



PSYCHIATRIC IMPRESSION:

1. No evidence of psychosis. No gross abnormalities in the mental status at this time.

2. Probable sociopathic personality.

3. In my opinion the subject would be considered legally sane and mentally competent to stand trial at this time.

4. From the subject's description he was intoxicated on wine at the time of the alleged offense and therefore it is probable that he has a toxic amnesia for the details of the alleged offense.

5. In the body of the motion to appoint a sanity commission it is mentioned that a brain scan test should be included which would enable medical experts to determine lack of mental capacity or the extent of mental capacity for the following grounds. It should be noted that this type of test would not give the information that is desired.

Sincerely yours,

/s/ Genevieve A. Arneson, M.D.
Genevieve A. Arneson, M.D.

GAA/em

ALBERT B. DEVILLIER, M.D.
2731 CHESTNUT ST.
NEW ORLEANS, LA. 70130

TELEPHONE 899-7164

June 10, 1980

The Honorable Judge Charles Gaudin
Division G
24th Judicial District Court
Parish of Jefferson
Gretna, Louisiana 70053

Re: Robert Sawyer

Dear Judge Gaudin:

The following is a psychaitric evaluation on Robert Sawyer as requested by the Courts in connections with a Lunacy Hearing to be held June 12, 1980. The subject was examined at Jefferson Parish prison on June 9, 1980.

The subject is a 29 year old white male who is originally from Memphis, Tennessee. He has been living in the New Orleans area for about 2 years with his common-law wife. He has an 8th grade education and is able to read some and write. His occupation has been working on boats as both a pilot and deckhand. He has been doing this same type of work for the last 14 years. He has never been in the armed services.

The subject states that approximately when he was 16 or 17 years old he took some type of medication for about three months. He had been hospitalized in Memphis, Tennessee. He doesn't know exactly why he was put into the hospital. While he was hospitalized he was put on medication, but he stopped taking the medication after



getting out and hasn't taken any since. He denies ever having seizures or convulsions. He states that he does not abuse drugs, but he has drank heavily for a long period of time. He drinks mostly Scotch. He indicates that his drinking takes place when he is not working.

In regards to the charges, the subject indicates that he is charged with first degree murder. As he indicates "I remember bits and pieces". He stated that he had been drinking all night with his common-law wife and they had left the lounge about 4:30 in the morning. He remembers staggering into the house and the babysitter indicated to him that she had given two of the children some pills to help them sleep. With that he hit her and he indicates that is all he remembers.

MENTAL STATUS EXAMINATION: The subject is a short white male about 5'2" tall weighing 136 pounds. He has very poor dentures. He has an artificial left eye. He indicated that he lost his left eye in 1971 in a car wreck. He denies having any hallucinations or delusions and there is no evidence of any thought disorder. His memory seems to be intact and he has fairly good insight and he is cooperative.

PSYCHIATRIC
IMPRESSION: 1. In my opinion the subject is legally sane in that he knows right from wrong, mentally competent in that he understands the nature of the charges against him and is able to assist counsel in his own defense.

Sincerely yours,

/s/ Albert B. DeVillier, M.D.
Albert B. DeVillier, M.D., Psychiatrist

ABD/el

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[3] PROCEEDINGS

May 29, 1980

MR. BOUDOUSQUE:

We are going to dictate into the record. My name is Phillip Boudousque, I am Assistant District Attorney representing the State of Louisiana in the matter State versus Charles W. Lane and Robert W. Sawyer. This is case Number: 79-2841. We have several motions that are up today at this particular point in time. In response to our motion for inspection and discovery, we are going to dictate for the record what has been supplied to Defense Counsel for their preparation in this matter. These items will be enumerated but it is my impression that both Defense lawyers have been supplied with the complete District Attorney's file and have full and complete access to all the evidence in this case with the exceptions of statements made by State witnesses, not the Defendants in the matter and the Grand Jury transcript which will be supplied to the Court for an in camera inspection to see if it contains any exculpatory material if the Defense lawyers so request. There is one segment of the Grand Jury testimony, the statement of a Detective Gerald Self [4] relating to a statement made by Charles Lane wherein Charles Lane admitted committing a rape of the victim, Fran Arwood, so at this point in time I would like both the Defense lawyers, Jim Weidner and William Noland to dictate or to reach a consensus as to what material they have been supplied. I would also like to put on the record in conjunction with complete and full discovery that any evidence that is presently in the custody of the District Attorney in the evidence locker on the fourth floor of the

Gretna Courthouse will be available for their inspection at any time at their convenience. I don't know all the evidence that is there but any evidence we have in the locker you can go there and see it and you will have no problems with that.

MR. WEIDNER:

In connection with this, to my knowledge the District Attorney has in fact supplied to myself the entire copy of his file with the exception of the articles he stated, a copy of the Grand Jury testimony and actual statements of witnesses.

MR. BOUDOUSQUE:

If I may read for the record that would include additional information I supplied [5] you that is beyond that letters of the Defendant, Robert Sawyer, addressed to Cynthia Shano and dated 10-6-79, 10-7-79, 10-10-79, 10-16-79, 10-17-79, 10-28-79, 11-9-79, 11-13-79, 11-22-79, 12-1-79, 12-7-79, 12-17-79, and 1-7-80. Written statements given by the Defendants, Charles Lane and Robert Sawyer dated 9-28-79, rap sheets of both Defendants, a copy of Robert Sawyer's previous conviction, Gretna Police report, one crime laboratory report Number 1500-79, Orleans Parish Coroner's Report and Autopsy Protocol, West Jefferson Hospital Records beginning 9-28-79, State's answer to Defendant, Robert W. Sawyer's motion for discovery, bill of particulars and motion for production, and State's motion for discovery and inspection.

MR. WEIDNER:

The letter received was a letter sent by Mr. Boudousque to a prior Defense Counsel for the Defendant Robert



Sawyer, Wiley J. Beevers, and it listed matters in the letter and in my review of the file all the matters listed in this letter dated February 13, 1980 were in fact supplied to the Defense.

MR. BOUDOUSQUE:

In addition to that I would like to [6] say we have supplied a fingerprint report from the FBI, a copy of that report has been furnished to both Defense lawyers, the statement of Gerald Self, Detective Gerald Self of Lane's statement when he was rebooked when the Grand Jury was submitted.

MR. WEIDNER:

Both of those articles have been supplied to me and I have been allowed to review photographs which were taken in connection with this matter also although I have not been supplied with copies of the photographs.

MR. BOUDOUSQUE:

This is the Rights of Arrestee that has just been supplied to me (handing document to Counsel).

MR. WEIDNER:

Could you get a copy of those?

MR. BOUDOUSQUE:

Although both the Defense lawyers have seen the photographs the State is going to try to duplicate the copy so they can have their own and if the State is not able to make a duplicate copy the negatives will be supplied to the Defense so they can make their own copies.

They have also been supplied with a list of the [7] evidence.

MR. WEIDNER:

Would you make a statement –

MR. BOUDOUSQUE:

Anything I obtain will be turned over. What I am saying everything I have at this particular time, this particular point in time is going to be in the evidence locker except maybe some burned sheets which you don't have and I might use that. By the end of the week all evidence we have will be filed in the evidence locker and you will have complete and total access to that evidence locker. Now on the bill of particulars – Do you want to make a statement that everything has been dictated so far is true and correct.

MR. NOLAND:

I'm going through it right now.

MR. BOUDOUSQUE:

The photographs of the crime scene itself, crime scene photographs as well as B of I photographs that were taken of each Defendant at the time of arrest as well as certain 8 by 10 and smaller photographs, Polaroid shots of Charles Lane.

MR. NOLAND:

For the record the State has asked me to respond with regards to production of [8] information or production of evidence and I would like to state for the record that referring to the letter dated February 13, 1980



directed to Mr. Wiley J. Beevers I have been handed a packet with items in it which are itemized on that particular letter of February 13, 1980, and for the record I would say that I have in fact received the first four itemized matters thereon, that the fifth matter refers to a Gretna Police report that in fact I have been supplied with a Gretna Police report containing twenty-eight pages, that I have been supplied with number 6 and number 7, number 8 was not in the packet but I have been handed a copy of the West Jefferson Hospital Record beginning 9-28-79 by the District Attorney and I have items 9 and 10. I would at this time state that is the only assertions we would like to make in the record with regards to this matter.

MR. BOUDOUSQUE:

How about the Grand Jury testimony of Gerald Self?

MR. NOLAND:

In addition to that the State of Louisiana has supplied me with a fingerprint report dated February 28, 1980 and a copy of a transcript which purports to [9] be testimony of Detective Gerald Self, pages 95 through 104. For the record, Your Honor, we have also moved for production of photographs and I would like to approach the bench with regard to that particular matter.

(Bench conference between the Court and Counsel.)

MR. WEIDNER:

In the State's motion for discovery and inspection I had filed an answer in the record to the motion and I would like to amend that answer to say that number 3 that at this time I do intend to introduce expert testimony

on the effects of intoxication on an individual that would bear on the Mintz charge but I don't have the definite name of an expert who will do it at this point. I am attempting to have a Doctor Milkey to testify on that point. He is with the Jefferson Parish Substance Center located on Jefferson Highway but at this point he has not agreed to do it.

MR. BOUDOUSQUE:

Also there is a motion for severance filed by Mr. Weidner and as a matter of record the State will say at this point in time both of these trials will be severed [10] and tried differently from Charles Lane, Charles Lane will be severed from Robert Sawyer.

MR. WEIDNER:

There will be other experts to testify to the possible cause of death of the victim.

MR. BOUDOUSQUE:

There may be a fire expert, Gene Hoeltke, and he will be called as an expert as an arson expert.

MR. WEIDNER:

Your Honor, I may also have a fire expert on arson. Who at this point I do not know his name.

MR. BOUDOUSQUE:

I don't have in the record Mr. Weidner's motion for a bill of particulars filed by Mr. Beevers.



MR. WEIDNER:

I have a copy of a motion which was provided to myself by your office and I will adopt his copy and put it into the record.

MR. BOUDOUSQUE:

Not that one. I think that is Mr. Noland's, Mr. Noland's is complete.

MR. WEIDNER:

Your Honor, as the attorney for [11] Robert Sawyer I am adopting the bill of particulars previously filed in this matter.

MR. BOUDOUSQUE:

Your Honor, there are several motions here. There is a motion for an individual voir dire examination filed by Robert W. Sawyer. The State has no opposition to that motion and in fact Mr. Weidner would like an individual voir dire that will be fine. There has been no such motion filed by Mr. Noland so desires the State has no obligations for that either. There is a motion filed by the State to obtain a handwriting specimen which we will pass at the moment because I believe that will be resolved at a later point in time. There is a motion to suppress the evidence as well as the evidence which we will have testimony shortly filed on behalf of Mr. Lane and Mr. Sawyer. There is a motion for discovery and inspection which has been filed by Mr. Noland on behalf of Charles Lane. Are you ready to do that particular motion.

MR. NOLAND:

I am ready to proceed on the motion for discovery and inspection. The Defendant is satisfied with the responses [12] of the State of Louisiana in that regard.

MR. BOUDOUSQUE:

Thank you, Mr. Noland. Then we have a motion for a bill of particulars – Oh there is one motion. Mr. Weidner filed a motion to appoint a sanity commission and order mental observations and tests up to this particular point in time I don't believe the Court has appointed a lunacy commission and if the trial is set for June 23rd and this motion is to be satisfied I think it would be important that that be done to day, Your Honor.

MR. WEIDNER:

Your Honor, I filed the motion and I thought that motion was set for hearing today. The doctors would be present. I was not aware –

MR. BOUDOUSQUE:

The original has not been signed by yourself, Judge.

MR. WEIDNER:

I think the State and the Defense both join in this motion.

MR. NOLAND:

Your Honor, I am going to be filing one additional motion. Everything presently filed I believe with the exclusion of the motion to suppress has been satisfied.



[13] MR. BOUDOUSQUE:

The motion for the bill of particulars is satisfied?

MR. NOLAND:

I will be satisfied with it.

MR. BOUDOUSQUE:

Everything but the motion to suppress the evidence and identification –

MR. NOLAND:

I think I will file a motion for impeaching that may be relevant in this matter.

MR. BOUDOUSQUE:

I don't have any impeaching information because I think that would be exculpatory information but Mr. Weidner asked to see the Grand Jury transcripts which I will not allow them to do but he asked the Court for an in camera inspection and I will give a copy to the Court for an in camera inspection. I will not forward a copy to the Defense lawyers but a copy is available to the Court.

THE COURT:

We are going around in circles. The motion to appoint a sanity commission was filed by you and in your motion Mr. Sawyer does not understand the nature of the charge nor does he understand the [14] differences between right and wrong and is unable to assist his attorney in his defense. Are you telling the Court that is so?

MR. WEIDNER:

What I am saying my discussions with Mr. Sawyer and my observation of him I am not sure and that is why I want to have a sanity commission appointed to examine him.

THE COURT:

What evidence do you have to submit to the Court if that is so?

MR. WEIDNER:

I would like to approach the bench.

(Bench conference between Court and Counsel.)

MR. BOUDOUSQUE:

That leaves us with all motions satisfied. The only thing that needs to be heard in this matter is the motion to suppress the identification, the evidence.

MR. WEIDNER:

The exculpatory, the State has supplied us with everything they have in their file at this point. They supplied me with a copy of the fingerprint report from the FBI on the can of lighter fluid. Were there any other fingerprints [15] attempted to be lifted such as the hammer, was it introduced for fingerprints and if so if there were any taken from it.

MR. BOUDOUSQUE:

You have what I have.



MR. WEIDNER:

To your knowledge you don't know if it was done?

MR. BOUDOUSQUE:

You have everything that was done. To my knowledge there was nothing else dusted for fingerprints. To my knowledge you have everything I have. Like I say if it is not I am not aware of it. There is one other open motion which is the State's motion for all alibi and discovery and inspection from Mr. Noland. I have not received an answer as to that and I have not received an answer to the motion for a handwriting specimen.

MR. WEIDNER:

The Defendant Robert Sawyer has no intention of putting in any alibi Defense so we will have no alibi witnesses we will present. As to the State's motion for a handwriting sample from Mr. Sawyer the Defense has no objections to providing this sample, Your Honor.

MR. BOUDOUSQUE:

[16] Are you willing to stipulate those letters were written by Mr. Sawyers?

MR. WEIDNER:

I can't say that at this point but I will give you a handwriting sample.

MR. BOUDOUSQUE:

I will make arrangements to take the handwriting sample Monday.

M.R. WEIDNER:

I will arrange with the District Attorney to be present with myself and Mr. Sawyer and the expert at the time they take the sample.

MR. BOUDOUSQUE:

Mr. Noland, do you have an answer?

MR. NOLAND:

I do not have a response to the State's motion for discovery and inspection at this time.

MR. BOUDOUSQUE:

Can you give me a response by Monday?

MR. NOLAND:

Sure.

MR. BOUDOUSQUE:

That leaves us with the motion to suppress. We would ask for a sequestration of all witnesses during the course of the motions.

(All witnesses were sequestered.)

[17] MR. BOUDOUSQUE:

I can state for the record there was no physical identification such as a lineup or B of I identification so I don't know what basis there is to suppress identification. Both Mr. Sawyer and Lane were known by all parties concerned and they were arrested on the scene. I call Officer Giroir.

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[608] CYNTHIA SHANO, 928 Porter Street, Gretna, Louisiana, was called as a witness by Counsel for the State and after first being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

MR. BOUDOUSQUE:

Q. Miss Shano, were you in an automobile accident last week?

A. Yes sir I was.

Q. Is that why you have a black eye?

A. Yes sir.

Q. Are you in somewhat of a weakened condition right now?

A. Yes sir.

Q. We will take our time and if at any time you feel you need to stop and take a rest, let us know.

A. Yes sir.

Q. Miss Shano, do you know Robert Sawyer?

A. Yes sir I do.

Q. How do you know Robert Sawyer?

A. We were engaged to be married?

Q. How long did you know Robert Sawyer prior to September 28, 1979?

A. About six or seven months.

Q. Did you live with Robert Sawyer?

A. In Texas I did.

Q. Do you see Robert Sawyer in the courtroom today?

A. Yes sir.

[609] Q. Would you point him out to the jury please.

A. He is to my right in the blue suit jacket.

MR. BOUDOUSQUE:

Your Honor, I would like the record to reflect the identification.

MR. BOUDOUSQUE:

Q. Miss Shano, I will refer your attention to the evening of September 27, the morning and the afternoon of September 28 of 1979. Would you please relate to the jury the facts and circumstances concerning an incident that occurred to Frances Arwood.

A. Starting from the beginning?

Q. From the very beginning. Do you know Frances Arwood?

A. Yes sir I do.

Q. How do you know Frances Arwood?

A. She was my ex-step-sister-in-law. She was married to my step-brother.

Q. Do you have any children?

A. Yes sir I do.



Q. How many children do you have?

A. Two sons.

Q. I show you State's Exhibit-3. Does this photograph accurately depict the condition of Frances prior to September 28, 1979?

A. The face, yes sir.

Q. Did she have any type of disfigurement on her face?

[610] A. No sir she didn't.

Q. State's Exhibit-4, does that photograph accurately depict the facial as well as the physique?

A. Yes sir except she didn't have as much weight. She was on a diet.

Q. Starting from September 27, starting from the beginning tell the jury what you know.

A. It was about 11:30 that morning. Fran had told me to go call my mother which was in the hospital and tell her I would be up there later to see her that I was going to bring her home first so I went and called my mother about a quarter to 12:00. When I talked to her at a pay phone, because we didn't have a phone in that house –

Q. What house are you talking about?

A. My home, 928 Porter Street, Gretna. Okay. I talked to her, I talked to her about 12:00 o'clock. That is when her lunch come. I picked up some cigarettes and got back to the house and it was about ten after noon or

maybe a quarter after 12:00 and I walked in and Bobby had told me to lock the front door and give him the key because we have the bolt locks that you need the key to get in and get out. Fran's mouth was bleeding and I asked what happened and Robert Sawyer said he had hit [611] her. He accused her of giving my youngest son some pills and they were still arguing.

Q. Was there any indication that Fran had given your younger son any pills?

A. None that I know of, no sir.

Q. Continue.

A. All right. She must have told him something because he told her don't smart off to me and he hit her again with a closed fist and she fell back on the bed again and he hit her again and that is when Charles Lane had started hitting her and he had told me to go into the bedroom where the children were and he followed me in there and I could hear Charles Land hitting her from in there and Bobby told me that I had better not call the police because if he went to jail for this, that if he went to jail –

Q. Continue from what you can recall.

A. I can't remember the exact words but he said –

Q. His words to the effect of what?

A. Words to the effect that if he went to jail and if he ever got out Lord help me and then after that he went back into the living room and I followed him in there and he told Fran to go wash her funky whory ass, that nobody wanted to look at her that way. [612] Her funky



whory self, no one wanted to look at her that way and I guess she went to get up again and he took and that's when he kicked her in the back of the head which knocked her back onto the sofa again.

Q. Who is he?

A. Fran.

Q. Who is he who kicked her?

A. Robert Sawyer, with his shoes which he also has taps on the end of the shoes and he took and he drug her by the head of the hair. He was in front of her and I was in back of him and Charles Lane was in back of me and he drug her into the bathroom and started throwing water and he told Charles Lane to watch her to make sure she didn't escape because there is a window busted out in our bathroom with a cardboard in it, that she could have gotten through.

Q. Was she dressed or undressed at the time she went in the bathroom?

A. She had her nightclothes on, her pajamas.

MR. WEIDNER:

I object to the leading.

MR. BOUDOUSQUE:

I asked whether she was dressed or undressed.

THE COURT:

Don't ask leading questions.

[613] THE WITNESS:

All right. I don't know, I guess she didn't want to get in and he knocked her back into the tub and her head –

MR. BOUDOUSQUE:

Q. Excuse me, Cynthia. The jury was not there. When you say he and she, you are going to have to use names, Robert Sawyer, Charles Lane, so they will understand the exact order of events so start from when she was taken into the bathroom.

A. Robert Sawyer had told Charles Lane to make sure that she didn't get out and I don't know, she was drawing the water and I guess she didn't get in fast enough. Fran didn't and that's when Bobby knocked her into the tub, clothes and all but her head hit the wall of the bathroom.

Q. How did he knock her into the bub [sic]?

A. I think he kicked her in. If I'm not mistaken he kicked her into the tub but her head just hit the wall and he took and Charles Lane took her out of the tub an undressed her and she got back into the tub on her own free will. Then the door was closed partially and I was in the kitchen by the sink and Robert Sawyer starting taking and warming some water in my coffeepot.

Q. How long was Charles Lane and Fran in the [614] restroom, the bathroom?

A. Maybe ten, fifteen, twenty minutes.

Q. Was the door open or was the door shut in the kitcher. The bathroom was the door open or shut?

A. I'm pretty sure it was just cracked open a little bit where you couldn't see because there is a dresser that



I keep the towels an [sic] the top drawer and the children's clothes in there and they also have like a little utility cabinet in there. You can put dirty clothes in and they were taking a pretty good while in there and I think Robert Sawyer sort of got mad and he went in there and he took and he poured soap powder over her and then the scalding hot water and Charles Lane started ducking her head under the water and punching her with a closed fist and she was taking – She got out of the tub and I don't know if she went – Fran tried to fight Robert Sawyer back or not but he went into a yell and he come up with both feet and he kicked her and when he kicked her –

Q. Where did he kick her?

A. In the chest. He kicked her back into the tub and her head either hit the window sill or the bathtub itself, not longways but this way in the tub where he [sic] feet were hanging [615] over the side and she never regained consciousness and the whole time I kept telling them to leave her alone, take her out so finally Charles and Robert Sawyer took her out and Charles Lane had her by the feet and Robert Sawyer had her by the head of the hair, face down and they dropped her in between the hall and the kitchen which was right there by the refrigerator. Robert Sawyer then started walking on her back and Charles Lane was kicking her in the ribs and Robert Sawyer started beating her with a belt, a leather western belt he had. It was black. I told them again to leave her alone. They put her back on the sofa-bed and I had covered her up. Her legs were closed and I was having diarrhea then and I was coming down with the flu.

Q. Excuse me, who placed her on the sofa-bed?

A. Robert Sawyer and Charles Lane.

Q. And was she placed on her back or on her stomach?

A. On her back.

Q. Was she dressed or undressed at that point?

A. She was undressed.

Q. You say you covered her up?

A. I covered her up.

Q. You say her legs were closed?

A. They were closed.

Q. Are you sure of that fact?

A. Yes sir I am.

Q. Then what did you do?

A. All right, that's when I went to the bathroom.

Q. Why?

A. I was having diarrhea at the time. I was coming down with the flu and I heard Robert Sawyer say to the effect I can show you how cruel I can be and then I didn't hear too much of anything else after that. I came out of the bathroom and I smelled something like burning and I asked them what it was and they were laughing and her legs were open when I come out of the bathroom.

Q. Did you see her face when you come out of the bathroom. Did you see the body?



A. I did not see her body because it was covered back up again.

Q. Did you see her face?

A. Not really. I was mostly concerned about the smell in the house and them laughing but I did see it afterwards when Charles Land said -

Q. Continue form the point when they were laughing. Who was laughing?

A. Robert Sawyer and Charles Lane.

Q. When they were laughing where were they in the house?

[617] A. They were in the kitchen at the kitchen table which is right there by the living room.

Q. What were they laughing about?

A. They were laughing because what they had told me Charles Lane said Robert Sawyer didn't have to take and set her on fire with him in her and that's when Robert Sawyer got up and said don't nobody told you to stay inside of her while I told you I would show you how hot pussy can get. That's when her face was all burned up and he had poured scalding hot water over her.

Q. When did he pour the scalding hot water over her?

A. It was after the incidents of the weird smell in the house.

Q. Okay, after you came out of the restroom?

A. Yes sir.

Q. That night on that day I should say on how many occasions did Robert Sawyer pour scalding water over Frances Arwood?

A. Twice. Once in the bathroom and once in the living room and when she was in the bathroom he tried pouring water over her to revive her to make her become conscious again but she never did.

Q. Cynthia, I am going to show you some photographs. I show you State's Exhibit-5. Can you identify that photograph?

[618] A. That is my ex-step-sister-in-law.

Q. Without the medical apparatus, does that depict the condition she was in after she was beaten and set afire by Robert Sawyer and Charles Lane?

A. Yes sir but she didn't have the blisters on her.

Q. State's Exhibit-6.

A. Again this is it but still she didn't have the blisters on her then either.

Q. State's Exhibit-7, do you know what that is?

A. That is her arm but I never got to see because it was under the covers.

Q. State's Exhibit-9.

A. That's her hand but again it was under the covers too.

Q. And State's Exhibit-8.

A. That's her legs but again it was under the covers.



MR. BOUDOUSQUE:

Your Honor, these photographs have already been introduced into evidence and at this point in time I would like permission to show these photographs to the jury.

MR. WEIDNER:

Which photographs?

MR. BOUDOUSQUE:

Five, 6, 7, 8, and 9.

MR. WEIDNER:

I don't believe they have been offered yet.

MR. BOUDOUSQUE:

Have they been offered and accepted into evidence?

THE COURT:

Yes.

MR. WEIDNER:

I would like to note my objection for the record again.

THE COURT:

The record contains your objection.

(The jury examines the exhibits.)

MR. BOUDOUSQUE:

Q. Cynthia, I'm going to show you State's Exhibit-10. Can you identify that photograph?

A. Yes sir, that is the alley part of my house.

Q. State Exhibit-11, can you identify that photograph?

A. Yes sir, that is the front porch leading through the front of the house.

Q. Who is this in the photograph?

A. That's me and the reason why I was in it because I had a messed up foot which was cocked up.

Q. State Exhibit-12, can you identify that photograph?

A. That's my mother's living room.

Q. And what is this a picture of?

[620] A. Which one, the whole thing here, that's a sofa-bed, our sofa opened up into a bed.

Q. Is that the sofa-bed you were speaking in reference to?

A. Yes sir.

Q. What type of sheets did the sofa-bed have on it?

A. If I'm not mistaken it was a fitted sheet.

Q. I show you State's Exhibit- 15 and 16. Can you identify those photographs?

A. Yes sir, that is still the living room sofa.

Q. Do you see these things on the sheets?

A. Yes sir.



Q. What is that?

A. Burn marks.

Q. Did those sheets have any burn marks prior to September 28, 1979?

A. These were brand new sheets that I had bought myself and I have been looking for them.

Q. I show you State's Exhibit-13. Can you identify this photograph?

A. That is the mattress on the sofa-bed in the living room.

Q. Does that photograph accurately depict the condition of the mattress after September 28 of 1979?

A. Afterwards but it wasn't like that before then.

Q. Describe that mattress prior to this incident.

A. Prior to it it was brand new mattress.

Q. Do you know what this red stuff all over that [621] mattress?

A. That is blood.

Q. Was that blood there prior to this incident?

A. No sir. It was a brand new mattress.

Q. These photographs accurately depict the condition of your sheets after the incident on that date?

A. After the incident but not before the incident.

Q. I show you State's Exhibit-19. Can you identify that photograph?

A. That is the kitchen table. The belt she was beat with and the MD 20/20 they were drinking. That is a soup tureen or a cookie jar, the washing machine and the sink.

Q. State's Exhibit-20. Can you identify that photograph?

A. That is our kitchen chair with my coffeepot on it.

Q. State's Exhibit-21, what is that a photograph of?

A. Part of the kitchen by the ice box and half of the hall where her feet was, and her face and it had blood stains.

Q. Is that a blood stain?

A. That's a blood stain because there is no stain on out kitchen floor by the ice box.

Q. Do you state that is where Frances was dropped?

A. Yes sir.

[622] Q. Where was her face?

A. Right her [sic] (indicating).

Q. Where was the other portion of her body?

A. It started in here and up in here because she was kind of tall.

Q. What kind of floor is that?

A. I don't know. My mother bought it after my father died which will be eleven years and it is a non-wax floor.



Q. Did it have any cushion or padding?

A. I don't really remember.

Q. State's Exhibit-14.

A. That is the living room again. The mattress, that is the kitchen and the records, Robert Sawyer was playing the whole time.

Q. You say he was playing records the whole time. Describe what he was doing in that action?

A. Robert Sawyer from what I remember from the time I was with him can think better and he has always told me he can get his mind working listening to music, music helps him think better.

Q. Was he listening to music that day?

A. Yes sir.

Q. From what time to what time do you recall?

A. From about 8:30, 9:00 o'clock until he was arrested.

Q. What was he listening to?

A. Mostly Elvis music except for this one here. [623] It was an old album that is on here now. We have still got it and I cannot remember because it is my mother's record and it is a real old one.

Q. Was it one record or many different records?

A. This is one album.

Q. Did he listen to one record or many different records?

A. Many different ones, mostly Elvis because he is an Elvis fan.

Q. How were those records changed?

A. He changed them himself.

Q. Was anyone operating that music box besides Robert Sawyer?

A. No sir.

Q. State's Exhibit-23.

A. That is the bathtub.

Q. Do you see this red portion of this tub here?

A. Yes sir.

Q. Was that in the tub prior to the incident in question?

A. None of it was except for the frogs in there.

Q. What is that?

A. This is blood. This is coffee grounds from the coffeepot.

Q. And when were the coffee grounds from the coffeepot placed in the tub?

A. I don't know exactly when the coffee grounds were put in the tub.

[624] Q. State's Exhibit-24. Can you identify that photograph and if so how?

A. That is my old stereo. That is not working because it needs a needle and that is my mother's ivy



plant which is dead and that is Robert Sawyer's Bible which we have got in Nederland, that's my Bible, his Bible, these are Oral Robert's little Bibles. They were sent to my mother and this is my father's Bible and this is the Bible if I can remember correctly that Robert Sawyer and I had gave to my mother and that is a hammer and these are records.

Q. Whose hammer is that?

A. The man that used to live across the street from the house.

Q. During the course of this incident who was in your house?

A. This incident. As far as I know Robert Sawyer, Charles Land and Frances Arwood.

Q. Where were your children?

A. And my two children.

Q. How old are your children now. How old were they on September 28?

A. All right, my youngest son was two and my oldest son was four.

Q. Where were they during the course of this crime?

A. They were in a bedroom but apparently somehow [625] or another my four year old saw a few things of what happened. That's how I found out Robert Sawyer

MR. WEIDNER:

Objection, Your Honor.

THE COURT:

Ask another question.

MR. BOUDOUSQUE:

You can't repeat what you know from another source, Cynthia. You can only repeat what you know from what you saw or from what you observed.

MR. WEIDNER:

Your Honor, would you explain the rule of hearsay to a witness please.

THE COURT:

There are forty exceptions or there-abouts to the hearsay rule, Mr. Weidner.

MR. WEIDNER:

The general rule we can argue.

THE COURT:

The general rule is that you cannot say what somebody else told you but there are many exceptions to that rule so I will proceed and you can object, Mr. Weidner at an appropriate time.

MR. BOUDOUSQUE:

Q. Were your children asleep or were they awake?

A. During the incident they were awake.



[626] Q. And where were they?

A. They were in the front bedroom.

Q. Were they in the front bedroom the entire time?

A. As far as I know except when my oldest son had to go to the bathroom.

Q. Did you ever go in the front bedroom?

A. Yes sir I did.

Q. Why did you go in the front bedroom?

A. Because Robert Sawyer told me to go in there.

Q. And why did he tell you to go in there?

A. After all of that had happened with him hitting Frances and everything he told me to go into the bedroom and that's when he followed me and I heard Charles Lane – See, we have two bedrooms, the front and the back bedroom. The back bedroom was my bedroom at that time but it is switched now.

Q. You stated that in your testimony that Robert Sawyer told Charles Lane to watch Frances Arwood in the bathroom, correct?

A. Yes sir so she didn't get out.

Q. I show you State's Exhibit-22. Is there anyway she could have gotten out of this bathroom?

A. Yes. Right here you can see a part of the cardboard. The boy that used to live next door busted it out with a football and I nailed a cardboard up there. You can see part of it.

[627] Q. After they were laughing what was said. While they were laughing what was said. Did either Charles Lane or Robert Sawyer speak to you?

A. They had told me what had happened.

Q. What did they say?

A. That Robert Sawyer had taken and set Fran on fire with Charles Lane inside of her and Robert Sawyer got up and said nobody told you to stay inside of her when I told you how I could show you how hot pussy can get.

Q. What happened after that, Cynthia?

A. Charles Lane went and laid on the sofa-bed. Frances' head was to the foot of the sofa-bed. Charles Lane went and laid next to her with his head at the head of the sofa-bed. Robert Sawyer then told me to go pack his clothes which were already packed because he had just followed me down from Texas because I came down here by myself in an eighteen wheeler.

Q. Did he tell you why he wanted you to pack his clothes?

A. He was going to leave.

Q. Did he say where he was going to go?

A. No sir he didn't but he wanted to take my youngest son with him.

Q. Okay, then what happened?

[628] A. I went in there and I tried to get out of my bedroom window. The window was also busted out and



my oldest son said "Momma, why are you trying to climb out the window when you can go out the front door." Robert Sawyer had the keys to that front door. He came in there and that's when he hit me up side the neck and that's when he made me go back into the living room. About a few minutes after that, maybe fifteen minutes after that there was a knock at the front door.

Q. Was there any discussion as to what should be done with Frances Arwood?

A. Charles Lane wanted to take and dump her off in Buras or Venice or somewhere like that. I don't really know. It was some place he was working at on the boat. Robert Sawyer said he didn't have enough gas to make the trip.

Q. Do you know what happened, continue from that point if you would from when he said he did not have enough gas to make the trip.

A. That's when Charles Lane went and laid next to her. He was still playing records.

Q. Who was?

A. Robert Sawyer and he was sitting with his legs crossed Indian style like and he was listening to the records and that's when [629] he told me to go pack his clothes and to make sure I didn't try to get away but I tried getting out of the window because I feared for my life and my children's lives and that's when my son said what he did and I got hit up side the neck.

Q. By whom?

A. Robert Sawyer.

Q. Why did he hit you up side the neck?

A. Because I tried to escape and that's when I was brought back into the kitchen and there was a knock at the front door and he wasn't going to let me open it until he heard my little nephew holler to my sister and my little nephew was fixing to kick the door in because he knew somebody was there. That's when Robert Sawyer decided to give me the keys to the door and told me not to open it out and not to go out and make sure I got rid of them when I got the door opened. When I got the door open a crack enough for me to fit through I made sure Robert Sawyer or Charles Lane wasn't in reach of me and I ran. That's when my sister took and she stood in between the door and she had dared Charles Lane or Robert Sawyer to move, to go out that front door.

Q. What did you do at that point?

[630] A. I went across the street and I called the police and the emergency unit.

Q. Describe what happened then.

A. I was pretty well in hysterics by then. The emergency unit beat the policemen there but I don't think they could go in with-out the police being there and Robert Sawyer and Charles Lane were taken out of the house handcuffed and put in a police car. One police car was sitting in my mother's yard which Charles Lane was put in and one was on the curb a little further than the driveway which Robert Sawyer was put in and they were, I guess they were brought to be booked and I had to give a statement.

Q. Did you give a statement?



A. Yes sir I did.

Q. Who did you give a statement to?

A. I can't remember his name or pronounce it right now. Detective Geiling?

Q. I show you State's Exhibit-25, a Xerox copy. I ask you to look through these documents and see if you can make an identification of that report. Are you able to read right now?

A. My vision is very blurred.

Q. Do you understand –

A. I can read it. That's why I have it pretty [631] close up.

Q. Is that your signature, Cynthia?

A. Yes sir. It's pretty shaky but it is it.

Q. Is this your signature here?

A. Yes sir.

Q. At the end of this page?

A. Yes sir.

Q. At the end of this page.

A. Yes sir.

Q. Are these your initials CAS?

A. Yes sir.

Q. Did you put those there?

A. Yes sir.

Q. And here?

A. Yes sir.

Q. And here?

A. Yes sir. I only wrote the signature where a mistake was made.

Q. Would you read from here on to the end. (Opposing Counsel examines document.)

MR. BOUDOUSQUE:

Q. Would you read from where it says right here, speak into the microphone, Cynthia.

A. Earlier today –

MR. WEIDNER:

She has already testified as to all the facts contained in the statement. I would suggest we have copies of it made and distribute it to the jurors and let [632] them read.

MR. BOUDOUSQUE:

I think I have the option of how I can prosecute my own case. Would you please read the st ment.

THE. WITNESS:

Earlier today, I think it was around noontime, I left my house to go use a phone to call my mother who is in the hospital. I drove to Franklin Avenue, and used the pay phone. When I left the house, Fran was sitting on the sofa-bed in the living room, and Bobby Sawyer my boyfriend was playing records, and this other guy who I



know only as Chuck was sitting on the side of the sofa-bed. My two children Wayne age four and Troy age two were in the bedroom playing. I stayed gone about fifteen minutes and when I got back home I saw Fran sitting on the side of the sofa-bed and her mouth was bleeding. Bobby and Chuck were arguing with Fran, and she was arguing back. They were arguing because Fran had given some pills to my son the day before. Bobby told Fran to quit smarting off to him, and then he punched Fran in the face. Fran fell on the sofa-bed, and Bobby punched her again. The other guy Chuck then [633] punched Fran, also in the face. After that Fran got up, sitting on the sofa-bed and Bobby kicked Fran in the head knocking her back over. Bobby then began punching Fran in the chest. Bobby told me to go on the other side of the house. I was scared so I went to the bedroom. Bobby came into the bedroom with me. Bobby told me I better keep my mouth shut about this, and that if he went to jail for this I better watch out when he got out. When I was in the bedroom I could hear the other guy Chuck hitting Fran. Bobby then went back into the living room, and I followed, when we got back into the living room I saw Fran lying on the sofa-bed and Chuck was also on the sofa-bed. Fran was all full of blood. Bobby told Fran to go "clean her whory, dirty, funky ass." She would not go to the bathroom, so Bobby kicked her in the chest. Bobby then drug Fran by the hair and took her to the bathroom. I was in front of them, and Chuck followed them. Fran started drawing water in the tub, and the guy Chuck was sitting on the toilet. Fran would not get into the tub so Bobby kicked her into the tub with her clothes on. When she fell into the tub her head hit the wall. Chuck [634] pulled Fran out

of the tub aand [sic] took her clothes off of her. Fran then got back into the tub on her own. When Fran was in the tub Bobby started heating water in the coffeepot. When Fran would not get out the tub, Bobby took the hot coffeepot of water and poured it over Fran's head. Bobby then went and got some soap powder and poured it over Fran's head. The guy Chuck kept ducking [sic] her head under the water and he kept punching her. B by then grabbed Fran by the head of the hair and pulled her out of the bathtub. Fran got up and must have drew her fist or something because Bobby kicked her in the chest and she fell back into the tub. Bobby told her to get out of the tub, and when she didn't move he got a pot of cold water and threw it on her. I told Bobby to leave her alone, I had been telling them to leave her alone, but they would not stop. I told them to get her out of the bathtub so Bobby again pulled her by the head of the hair and pulled her out the tub and onto the floor. Fran was face down and Bobby walked on top of her. Chuck then began kicking her in the ribs. I kept telling them to leave her alone and pick her up. Finally Bobby picked her up [635] by the head, and Chuck grabbed her feet. They carried her on the sofa-bed in the living room. One of them, I don't know exactly know which one got scalding water from the coffeepot and poured on Fran. I was in the bathroom at this time and I cold hear them and I heard Bobby tell Chuck I'll show you how cruel I can be. When I got out of the bathroom, I walked into the living room. Bobby and Chuck were sitting at the kitchen table. Fran was lying on the sofa-bed she was passed out. I could smell something burning, but I could not figure out what it was. Bobby made me sit down at the table Chuck told me that Bobby



set them on fire, and he said that Bobby did not have to set him on fire with her. Bobby told Chuck he should not have stayed in her when he told him that he would show him how hot pussy could get. That's when Bobby told me that he set them on fire with the lighter fluid. Chuck then went into the living room and layed down on the sofa bed next to Fran and went to sleep. Bobby told me to go pack his clothes. He then hit me on the neck. I went into the bedroom to go pack his clothes. When I was in the bedroom I heard someone knocking [636] on the door outside. Bobby wasn't going to let me answer it. He heard that it was my nephew Tommy. He told me to go outside and get rid of him. When I opened the door I saw my sister Sylvia in the car. I ran to my sister and told her to help me, I told her that Bobby and the other guy had beaten Fran up. I then went across the street and used a neighbor's phone and called the police and a little later that's when the police came. Question: Did you see either Bobby or Chuck strike Fran with any objects. Answer: No I only saw the [sic] punch her and kick her and pour the hot water on her. Question: Did anyone have sexual intercourse with Fran during the time period that you observed Bobby and Chuck beat on her. Answer: Not that I saw, but I heard Chuck say "I was fucking her when Bobby put her on fire." Question: How long have you known Bobby Sawyer. Answer: Going on six months. He's been living with me for almost six months. We were supposed to get married. Question: How long have you known the guy you call Chuck. Answer: I just met him this morning when Bobby brought him home. Question: How long have you known Fran. Answer: I've [637] known her for a few years, she has been staying with me

since Monday night. Question: Is there anything you wish to add to this statement at this time. Answer: No. End of statement.

MR. BOUDOUSQUE:

Q. How long after the police arrived at your residence did you give this statement to the Gretna police?

A. Not too long afterwards. I don't remember.

Q. Describe your mental and emotional and physical state.

A. I was pretty well much in hysterics really.

Q. What type of belt did Robert Sawyer use when he was beating Fran?

A. It was a black leather western belt. It's in one of the pictures.

Q. I show you State's Exhibit-19. Do you see a photograph of that belt?

A. Yes sir. It is right here. The western buckle on it. The western belt. He bought it at Sears and Roebuck.

Q. When was that belt used?

A. When he beat Fran that morning on the rear.

Q. And at what point in the incident was this. At what point in time during the incident was that.

A. That was after he had taken her out of the tub and dropped her in between the hall and by [638] the ice box to the kitchen.

Q. Did you and Bobby go out the night before?



A. For a while I went out with him, yes sir.

Q. Did you go out alone or was anyone with you?

A. We went by ourselves.

Q. Who was at your house when you left

A. Frances Arwood and my two children, Wayne and Troy.

Q. When is the first time that you met Charles Lane?

A. That morning of the incident.

Q. Did you know him at any time prior to the incident?

A. No sir I didn't.

Q. Where did you go with Bobby Sawyer?

A. First we went on Fourth Street in Harvey with what they call Sammy's Lounge to see a friend of his. We had a couple of swallows of MD 20/20. From there we went to the Hourglass which is on the service road and the Expressway in Gretna and not too far from my house.

Q. Did you see if he had any drinks at the Hourglass?

A. Who?

Q. Robert Sawyer.

A. Yes sir. He was drinking pretty heavy hard liquor.

Q. Do you know how much alcohol he had consumed?

[639] A. Not really, no sir.

Q. Did Robert Sawyer at any time on the 27th or the 28th appear to be incoherent to you?

A. No sir. He can get to drinking a lot and still walk a straight line and still know what is going on.

Q. You have been around Robert Sawyer when he was drinking a lot?

A. Yes sir, in Texas.

Q. Does he handle his alcohol fairly well?

A. Pretty good but he has a temper.

Q. He has a temper?

A. He has a temper when he's drinking and listening to his music.

Q. What do you mean he has a temper?

A. He gets mad over any old thing. You look at him cross ways when he's drinking and he gets mad.

Q. Do you know how much alcohol he consumed at the Hourglass?

A. Not really, no sir I don't.

Q. What happened after you left the Hourglass?

A. I went home.

Q. And pick it up from when you went home, when is the next time you saw the Defendant?

A. It was anywhere between 7:30 and 8:30 the next morning.



Q. And who was with him?

A. Charles Lane.

[640] Q. Did they have any type of alcohol with them?

A. MD 20/20.

Q. Do you recall how many bottles of MD 20/20 they had?

A. They had three.

Q. Do you recall how many bottles they had drank from the time they got to your residence until the time the police arrived?

A. They had done killed two bottles of it and I think it was either a half or a little over half of the third one.

Q. Was the Defendant staggering?

A. No sir he wasn't.

Q. Was he slurring his speech in any form or fashion?

A. No sir.

MR. STEPHENS:

Your Honor, I object to the continuing leading nature of the District Attorney's questions. This has been going on since this witness has been on the stand.

MR. BOUDOUSQUE:

I will rephrase the question.

MR. BOUDOUSQUE:

Q. Did he give you any indications whatsoever that he was incoherent?

MR. STEPHENS:

Your Honor, I raise the same objection again to that question.

[641] THE COURT:

The Court overrules that.

MR. BOUDOUSQUE:

Q. Did he give you any indication whatsoever that he was incoherent and did not understand the events that were going on around him?

A. No sir. He knew pretty well what he was doing.

Q. Why do you say that?

A. Because Robert Sawyer can drink a whole lot and when he listens to his music it makes him think that much more and the more he listens to it, to a certain song especially by Elvis he gets mad.

Q. Okay, describe in the conversations that you had with the Defendant as well as the conversation the Defendant had with Charles Lane, not what was said but describe the manner of his speech. Was it coherent. Was it incoherent. Was his speech slurred or did he have a thick tongue or anything like that when he was talking to you.

A. No sir.

Q. Describe his speech the best way possible.



A. The speech was normal. If he would talk now it would be the same way.

Q. Did you see his walk. Did you see his physical coordination?

A. Yes sir. He could walk a straight line.

Q. Did he appear to be physically coordinated to [642] you?

A. No sir. He wasn't staggering or bumping into anything or anything like that.

Q. After this incident, did you receive any correspondences from the Defendant?

A. Yes sir. I received phone calls after. First he was calling me at my sister's house because we didn't have a phone and my mother got a phone put in and he got it from the operator. He was calling and he had this Robert Hicks in jail with him calling and his sister and brother-in-law were calling me and the last time his sister and brother-in-law called me they threatened me and he wrote letters.

MR. WEIDNER:

I object to this. I believe also the jury should be removed so we can go into the prior discussions.

MR. BOUDOUSQUE:

I will not go into the contents of the letters. I will introduce them in globo.

MR. WEIDNER:

That is why I think we should remove the jury because of our prior discussions.

THE COURT:

I think the prior discussions centered around the Court's reading the [643] letters before they were submitted to the jury.

MR. BOUDOUSQUE:

I will offer them in globo.

MR. BOUDOUSQUE:

Q. Cynthia, before the instructions, I believe we were at the point where you stated you received some letters from the Defendant.

A. Yes sir.

Q. I will show you State's Exhibit-27 which has been marked in globo. Would you briefly look through these correspondences and see if these are the letters that were written to you by the Defendant. You don't have to read each one.

A. I recognize the handwriting.

Q. Whose handwriting is that?

A. Robert Sawyer.

Q. What were your feelings toward Robert Sawyer after this incident?

A. I was still in love with him and it took me a while to get over him but I did it.

Q. Did you write back to the Defendant?

A. Yes sir I did.



Q. On how many occasions?

A. I don't remember how many letters I wrote.

MR. BOUDOUSQUE:

Mr. Weidner, do you have a copy of those letters?

[644] MR. WEIDNER:

I have the originals.

MR. BOUDOUSQUE:

Q. The letters you reviewed so far were all written to you by Robert Sawyer?

MR. WEIDNER:

I will state that is all the letters there are, there are also some other letters over there but they are letters written by Robert's sister to him.

MR. BOUDOUSQUE:

Your Honor, for purposes of identification I'll mark these letters as State's Exhibit-26 in globo. I am sure Mr. Weidner will use them and have a Defense number also.

MR. BOUDOUSQUE:

Q. Cynthia, you said you wrote back to Robert Sawyer.

A. Yes sir.

Q. I ask that you look through those letters.

A. That is my handwriting.

Q. Did you speak with Robert Sawyer after this incident?

A. Yes sir.

Q. Did he speak to you?

A. Yes sir.

Q. What was the nature of the conversations?

A. He kept telling me that I was the only one that [645] could help him out of this. It was all in my hands.

Q. Is that the basic itinerary of the letter that were written. The letters that were written to you by Robert Sawyer. Is that basically what those letters state?

A. On there. Not really except there that I did tell him that scalding hot water was poured on Fran and all.

Q. What else did you talk about with him?

A. In the letters?

Q. At any time, the letters as well.

A. Telephone?

Q. Uh-huh.

A. Well telephone conversations were mostly like everything was in my hands, whether he went to jail or got the death penalty or anything. He put it all in my hands as he said it. I was the only one that could help him and like I tried to explain to him I couldn't really help him when I talked to him over the phone.

Q. What do you mean?

A. Not by trying to get up and sit here and lie and say well no he didn't do it. I would be lying, but I was still in love with him and I worshipped him even though



I had left him in Texas because he tried keeping me away from my family and my mother was [646] all I had left and that wasn't going to get it and that is when I left him and I come down here by myself with my two children and he was in Texas and he followed me two days later down here.

Q. About what time did you finally get over the emotional feelings you had for the Defendant. What time did you finally get over your emotional feelings you had for the Defendant?

A. It was I think just before Christmas or a little after Christmas.

Q. What did it take for you to get over the feelings you had for the Defendant?

A. I finally got my head together because after the incident happened I wanted to try and block everything out of my mind that had happened and I found out I could not do it and I started putting the pieces together and I realized what he had really done.

MR. BOUDOUSQUE:

I have no further questions.

MR. WEIDNER:

At this time I believe the Court had agreed to let Miss Shano take a break before we begin the cross examination.

THE COURT:

If you wish to break I certainly will.

[647] THE WITNESS:

I need a rest. I am weak.

THE COURT:

We will recess for ten minutes.

(The jury was removed at 11:40 a.m. Reconvened at 12:00 noon. Polling of the jury was waived by both the State and the Defense.)

CROSS EXAMINATION

MR. WEIDNER:

Q. Miss Shano, my name is Jim Weidner and I represent Robert Sawyer.

A. Yes sir.

Q. Miss Shano, I believe in your testimony to the District Attorney you said the night before this incident occurred that you and Robert had gone out.

A. Yes sir.

Q. The first place you went to was a place called Sammy's Bar?

A. We didn't go in.

Q. I realize you didn't go in but you went to Sammy's Bar first.

A. Right.

Q. At Sammy's Bar Robert was drinking MD 20/20 wine?



A. With some guy there. I don't remember his name. He tried to borrow some money from him.

Q. But he was drinking MD 20/20 wine?

[648] A. Yes sir he was.

Q. Approximately how long were you at Sammy's Bar?

A. About ten or fifteen minutes and that was it.

Q. Did you see how many drinks of wine Robert had at Sammy's Bar?

A. He took two or three swallows out of the bottle itself from this guy that had it.

Q. One of those big bottles, quart bottles?

A. They only come in one size as far as I know.

Q. When you left Sammy's Bar you went to the Hourglass Lounge?

A. Yes sir.

Q. You testified that Robert was drinking heavily at the Hourglass Lounge.

A. He was drinking some kind of whiskey. He was drinking beer and then he switched to whiskey straight.

Q. Do you know how many beers Robert had drank at this other lounge?

A. No I don't remember.

Q. Plenty?

A. I just didn't keep track because he was mostly drinking and shooting pool.

Q. But he drank so much beer you couldn't keep track of it?

MR. BOUDOUSQUE:

Objection, Your Honor. That question said he was drinking so much beer she couldn't keep track.

[649] THE COURT:

Would you repeat your answer?

THE WITNESS:

I just didn't count how many he drank.

MR. WEIDNER:

Q. But it was plenty.

A. I really don't know.

Q. At what point did he switch and begin drinking whiskey?

A. After I think maybe two or three beers, maybe. He started with whiskey.

Q. Do you remember or do you know how much whiskey he was drinking?

A. I didn't keep track because I don't keep track of people that drink because I don't drink.

Q. How much was he drinking. Was it whiskey in a mixed drink or was he drinking it straight?

A. Straight.

Q. In a little shot glass?



A. I don't remember if he had a shot glass or not.

Q. You said you don't remember how much whiskey he drank?

A. Right.

Q. Approximately how long were you with him at the Hourglass Lounge?

A. All I know I was there up until in between 12:00, 12:30, 1:00 o'clock or 1:30.

Q. In the morning?

A. Right. I went back home.

[650] Q. And Robert drank continually the whole time you were with him?

A. Except when he was shooting pool.

Q. When you left the Hourglass Lounge was Robert drunk?

A. No he wasn't drunk.

Q. What makes you think he wasn't drunk?

A. Because he doesn't get drunk that easily. He can handle his liquor.

Q. What time would you say you arrived at the Hourglass Lounge?

A. That I don't know.

Q. Do you remember what time you left your home that evening?

A. Approximately between 6:30 and maybe 7:00 or 7:30 we left the house, my house.

Q. And you went from your house directly to Sammy's?

A. Right.

Q. So you were at Sammy's I believe you said fifteen minutes?

A. About ten or fifteen minutes in the parking lot. He was talking to this guy.

Q. You arrived at the Hourglass Lounge somewhere around 8:00 o'clock?

A. Maybe 8:00, 8:30, 9:00 o'clock. I don't remember the time.

Q. And until 1:00 or 1:30 in the morning when you left the Hourglass Lounge, Robert drank [651] either beer or whiskey continuously. He always had a drink when he played pool or do other things.

A. After I left I don't know what he drank.

Q. I'm talking about when you were there with him.

A. He was drinking.

Q. Miss Shano, in connection with this case you have discussed it with the District Attorney, haven't you?

A. Sir?

Q. You have discussed this case and your testimony with the District Attorney.

A. Day before yesterday, or night before last, that evening.

Q. You have discussed it on other occasions, haven't you?



A. Not since Charles Lane's trial, no sir.

Q. Until the night before last, the day before yesterday.

A. That's the first time since Charles Lane's trial.

Q. Miss Shano, at anytime isn't it true that in fact you didn't leave the Hourglass Lounge that night and go home. You stayed with Robert Sawyer all night, didn't you?

A. No sir I did not.

Q. And that you and Robert Sawyer met Charles Lane at the Hourglass Lounge.

A. No sir I did not meet Charles Lane there.

[652] Q. You all stayed out together all night.

A. No sir we didn't.

Q. And that approximately between 7:00 and 7:30 in the morning, yourself, Robert Sawyer and Charles Lane arrived back at your home at 928 Porter Street.

A. I didn't, no sir.

Q. Do you know Doris Vicknair?

A. Yes sir I do. She lives across the street from my mother's house.

Q. Then you are aware that Doris Vicknair saw you.

MR. BOUDOUSQUE:

Objection, Your Honor, on the grounds is you want to bring what she is aware of with Miss Vicknair or may not

testify to the proper basis would be Mrs. Vicknair herself and not whether or not she is aware of fact that is not in evidence yet.

THE COURT:

What is the question?

MR. WEIDNER:

Q. The question is that Doris Vicknair saw her, Charles Lane and Robert Sawyer arrive home together at approximately 7:00 to 7:30 in the morning.

A. That is what she said but we haven't been on talking terms for a few years. She had just moved on our street. She used to live on the corner which is Hancock Street [653] and we haven't gotten along. She always is getting a hold of my children and everything.

Q. Do you know Doris Hebert?

A. Doris Hebert. I don't know a Doris Hebert.

Q. Lives at 930 Porter Street.

A. 930. I don't know of a Doris Hebert, no sir.

Q. Then you couldn't be aware that Doris Hebert also saw you arrive home at that time.

MR. BOUDOUSQUE:

Objection. If she doesn't know Mrs. Hebert how can she be aware of anything Mrs. Hebert may or may not have said and that question is a way to get in front of the jury a question which should not be asked.



THE COURT:

Are you calling her as a witness?

MR. WEIDNER:

Yes sir.

THE WITNESS:

I don't recall a Doris Hebert living on our street. Only a Doris Vicknair.

MR. WEIDNER:

Q. In fact Doris Vicknair is the woman's home that you went to phone the police the day this incident occurred, isn't it?

A. Yes sir but she is a Vicknair.

Q. You remember speaking to police officers or [654] detectives the day the incident occurred?

A. Over at B. H. Miller's office, the Sheriff's office on Fifth Street, yes sir.

Q. Are you good friends with B. H. Miller?

A. Not me.

Q. Who is?

A. My mother and my sister and them are.

Q. Do you remember making a statement that B. H. Miller was going to fix this for you?

A. Going to fix it for me. I don't remember making a statement that he was going to fix it, no sir.

Q. What statement did you make?

MR. BOUDOUSQUE:

Objection, Your Honor. That question is immaterial, improper, and a proper foundation has not been laid for that question. She made various statements at many different times and unless Mr. Weidner would care to be more specific as to what statement at what time and to whom I would object to that question.

MR. WEIDNER:

I withdraw the question.

MR. WEIDNER:

Q. Do you know an Officer Neal Giroir, Gretna Police Department?

A. I'm pretty sure I do, if he had a broken arm at one time, yes sir.

[655] Q. That is Neal Giroir. Do you remember him being present on the scene the day this happened?

A. I don't remember the day it happened who all was on that scene, the officers.

Q. You remember speaking to policemen before you were brought to the police station. Do you remember speaking to a policeman?

A. I remember speaking to some but I couldn't tell you who they were because I don't know.

Q. During the course of the speaking to these policemen do you remember telling them that you had been held hostage and locked in a room for four hours that morning?



A. I was locked in the house and being held not to get out. Robert Sawyer had the key to the house in his pocket.

Q. Do you remember telling the officers that you had been locked up in the house and held hostage for four hours.

A. I don't remember about the four hours. I think I remember I said being kept locked up in the house, yes sir.

Q. Do you remember since you said you did not come home with Robert Sawyer, do you remember what time Robert Sawyer and Charles Lane arrived at the house?

A. Between 7:30 and 8:30 in the morning, that morning.

Q. Were they intoxicated when they arrived?

[656] A. They could both walk a straight line and they were talking all right.

Q. Did they tell you what they had been doing all night?

A. No sir they didn't.

Q. But you had left them in a barroom, correct?

A. I left Robert Sawyer, not Charles Lane.

Q. Do you remember speaking to Doris Vicknair when you went over to make the phone call?

A. I sat down at her kitchen table, yes sir.

Q. Do you remember telling Doris Vicknair when you were sitting there talking to her that you didn't know what happened, that you weren't even home when this happened.

A. I wasn't there when it started, no sir, I wasn't. I was on the phone.

Q. Didn't you tell Doris Vicknair you don't know what happened because you weren't there at all.

A. No I told her I wasn't there when it started.

Q. What time did you say you got back to the house after you made that phone call to your mother at the hospital?

A. I called her and it was about a quarter to 12:00, I got on the phone with her about 12:00 or two or three minutes after 12:00 and I got back to the house, it was about ten minutes after or a quarter after 12:00.

[657] Q. Was Robert drunk when you got back to the house?

A. He wasn't drunk. He could still talk and he could still walk a straight line and he could do a lot of hitting.

Q. You have testified in this courtroom on a number of occasions haven't you?

A. For the pretrial and for the trial of Charles Lane, yes sir.

Q. Do you remember testifying on June 3rd, 1980?

A. I don't remember the date.



Q. But you know you testified around that time.

A. Testified in June, yes sir.

Q. Do you remember testifying on June 3rd, 1980, you were asked the question, "Did he," meaning Robert Sawyer, "get drunk in the Hourglass." Your answer was, "He did." Would you like to look at it?

MR. BOUDOUSQUE:

May I see the portion of the transcript you are referring to.

THE WITNESS:

It's also got there he could still walk a straight line and know what he was doing.

MR. BOUDOUSQUE:

I would like to see the copy. I would object to a piecemeal reading of this portion because I think for the jury [658] to understand the entire nature of the statement of Mrs. Shano when she was questioned that the thing should be read in its entire context so its content will not be distorted.

THE COURT:

You can do that on redirect, Mr. Boudousque.

MR. WEIDNER:

Q. You testified that he was drinking a lot.

A. Sure was.

Q. Did he get drunk. He did. Was he very intoxicated. Bobby can get intoxicated. He can get drunk and

still walk a straight line. He doesn't pass out but he gets violent. Do you remember that?

A. That's right. He does get violent.

Q. He was drinking a lot in the Hourglass.

A. Right.

Q. Do you remember testifying to that now?

A. Yes sir because there is a type Bobby Sawyer drinks and I can't remember the name of it and there is something that is added with it in Seven-up or coke or something like that. I can't remember what it is either.

Q. So contrary to what you testified before Bobby was in fact drunk in the Hourglass Lounge, drunk.

A. No so drunk he didn't know what he was doing, [659] that he couldn't shoot pool.

Q. How many bottles of this MD 20/20 wine did Robert and Chuck have that morning?

A. There were three bottles.

Q. They were drinking them?

A. Yes sir.

Q. They continued drinking them. They just continued drinking them. I believe you testified they had drank about two and a half of them.

A. Right.

Q. When you left your house to go make the phone call was Bobby drunk then?



A. Not really. He was sitting there talking. To me he wasn't. He was listening to his music.

Q. Well was he close to being drunk?

A. Really I can't tell because I don't know how much it would really take to get Robert Sawyer really drunk where he couldn't walk a straight line and pass out.

Q. From the same transcript, page 217. Do you remember this question and answer.

MR. BOUDOUSQUE:

Transcript of what?

MR. WEIDNER:

The June 3rd, the same transcript, June 3rd, 1980.

MR. BOUDOUSQUE:

[660] That is a pretrial motion.

MR. WEIDNER:

The pretrial motion. Do you remember this.

MR. WEIDNER:

Q. At a quarter to 12:00 when you left was Bobby drunk. He wasn't really drunk but he was about there.

A. He was about there but like I said before he can get drunk and still walk a straight line and know what he is doing.

Q. Let me make sure this is correct. On the night preceeding this you and Bobby went out. You went to

Sammy's first where Bobby had a few swallows of MD 20/20 wine.

A. Yes sir.

Q. And then you went to the Hourglass Lounge and Bobby was drinking beer and whiskey at the Hourglass Lounge.

A. Yes sir.

Q. You are saying now you left and went home. Bobby arrives home the next morning with Chuck and they are drinking MD 20/20 wine.

A. Yes sir.

Q. They drink two and a half bottles of that.

A. Yes sir.

Q. Miss Shano, you refer to some telephone conversations that you had with Glenda White. I believe it's Robert's sister?

[661] A. Yes sir.

Q. Do you remember speaking to her on the phone?

A. Her and her husband and his grandmother.

Q. How many occasions would you say you spoke to them on the phone?

A. My recollection, twice. Once here in New Orleans when they came down here and the other was in Florida.

Q. Do you remember what you told them on the phone?



A. I told Robert Sawyer's sister and brother-in-law when they called me from Florida that Bobby did pour the scalding hot water on her and everything else and all and they threatened me and told me if I didn't change my statement and help him, and that's all he said. They never told me what would happen or anything.

Q. You remember the content of your last conversation, telephone conversation?

A. That was the last contents of the telephone conversation that I can remember.

Q. What was the content of the first one?

A. That was his grandmother and them called. They had thanked me for sending Scotty Wayne back up there which is Robert Sawyer's son from Texas. They were worried about him and everything and that my statement would send her brother behind bars for life [662] maybe and they didn't like the idea of it.

Q. How long after this incident occurred did this phone call take place?

A. I don't remember.

Q. A day after, a month after?

A. It wasn't a day after because it was a while after that when they went and visited him in jail. When his grandmother came to New Orleans with his sister and his brother-in-law.

Q. Well was it two weeks, was it two weeks after?

A. I don't remember. I really don't.

Q. You remember the Whites calling and telling you they were concerned about Bobby, they didn't know what was happening and they asked you what had happened that morning. Do you remember that?

A. I told them what happened from the time I got home.

Q. That's right, Miss Shano. You told them what happened.

A. From the time I got home.

Q. Do you remember telling Mrs. White that this incident would never have happened if Bobby wasn't so drunk?

A. No I told her as far as I can remember it wouldn't have happened if I would have been home or my mother would have been home out of the hospital.

[663] Q. So then you weren't home when the incident occurred.

A. When it first started I wasn't, no sir. I was talking to my mother on the phone.

Q. Do you remember telling Mrs. White that you and Robert had gone out the night before drinking?

A. I don't drink.

Q. Do you remember telling Mrs. White that you met this guy Chuck Lane at the Hourglass Lounge the night before the incident happened?

A. No sir I did not.

Q. Do you remember telling Mrs. White that on the morning of the 28th of September you arrived at home,



yourself, Robert and Chuck, you were all so drunk you could barely walk and that you went into the house.

A. No sir because I do not drink.

Q. Do you remember telling Mrs. White that when you went into the house you went and checked the two boys and one of the boys was acting really funny like he had been doped up or something?

A. No sir I did not.

Q. Do you remember telling Mrs. White that you called Bobby, Bobby checked and you went and asked Fran what was wrong with the boy?

[664] A. No sir I did not.

Q. Do you remember telling Mrs. White that Fran said she didn't know what was wrong with the boy and that Bobby got enraged and punched her in the face.

A. No sir.

Q. Do you remember telling Mrs. White that Fran admitted she had given Troy, the youngest boy, something to quiet him down because he had been too active the night before while she was watching him.

A. No sir.

Q. Do you remember telling Mrs. White that at that point you tried to get Fran to tell you what she had given Troy but she wouldn't tell you.

A. No sir.

Q. Do you remember a big argument ensued, Robert became enraged because she wouldn't tell you

what was or what drug or whatever it was she had given Troy?

A. No sir because Robert Sawyer is the one who kept insisting she gave him pills and I would be the first one to take my son to the hospital if I thought he had been doped up.

Q. Do you remember all three of you had gotten enraged because she had given the youngest child pills?

A. No sir because it takes a good bit to get my [665] temper up. It takes, I hold everything in and Frances was my ex-sister-in-law. She was married to my step-brother and her and I never had a cross word and we were very close, more like sisters than sister-in-laws. We tried to keep in touch. I wouldn't have done anything to hurt her and she wouldn't have done anything to hurt me or my children because she loved them. She didn't have children of her own.

Q. Do you remember telling Mrs. White that when Fran wouldn't tell you all what kind of pills she had given Troy that both you and Robert began slapping and kicking her?

A. No sir because I don't go around hitting people I don't even hit my children. I kneel them in the corner.

Q. Do you remember telling Mrs. White that finally Charles Lane who had been standing on the side sort of staying out of this while you all argued, charged past you, pushed Robert out of the way and Robert being so drunk wasn't really doing too much and said by God I will make the bitch tell me what kind of pills she gave Troy?



A. No. No. No sir.

Q. You don't remember any of that.

A. No sir. I didn't say that.

Q. Do you remember telling Mr. and Mrs. White in a [666] telephone conversation just after the victim Fran Arwood died that Fran had died now and that you were in a lot of trouble or could be in a lot of trouble and that you were going to do anything you could to keep yourself out of trouble.

A. No sir I did not.

Q. Do you remember telling Mr. and Mrs. White in a telephone conversation that Robert couldn't have helped anybody if he wanted and didn't know what he was doing because he was too drunk.

A. No sir I didn't.

MR. WEIDNER:

(Addressing the District Attorney) This is a letter written by Cynthia Shano on October 11 to Robert Sawyer.

MR. WEIDNER:

Q. Miss Shano, this is a letter you wrote to Robert Sawyer. You already identified it as being your letter in your handwriting.

A. Uh-huh.

MR. WEIDNER:

Your Honor, for identification purposes I wish to mark this a Defense-1. I'm sorry, this would be Defense-2.

You want me to read the whole story or the pertinent part and put the whole letter in for the jury. I just think I could, I'm [667] trying to anticipate, you wouldn't want the whole letter to be read?

MR. BOUDOUSQUE:

I would like the whole letter to be read.

MR. WEIDNER:

We will put the whole thing in but use this for questioning now.

MR. WEIDNER:

Q. In your letter you wrote to Robert Sawyer on October 11 you stated Bobby, right now I couldn't tell you what is in my statement because I don't really know. The state that I was in at that time I'm trying to put all the pieces together myself right now. All I know is that for sure that boiling hot water was poured on her. As far as the lighter fluid I don't know about that. You stated in this letter you didn't remember what happened on October 11th. This is ten or twelve days past it.

A. When Mr. Boudousque questioned me I also stated that I wanted to blot everything out. Everything out of my mind after I gave the statement.

Q. Did Mr. Boudousque help you remember what happened?

A. Not really because I started talking and putting my pieces together. When I got everything, [668] every piece together then I realized what Robert Sawyer had done and my love for him had started dying and I wanted him out of my life.



Q. When did you realize that?

A. After I finally got all the pieces together, when I realized I couldn't blot everything out of my mind. There was too many things in the house that reminded me.

MR. WEIDNER:

Your Honor, I have no further questions.

REDIRECT EXAMINATION

MR. BOUDOUSQUE:

Q. Cynthia, do you recall when we first met, you and I?

A. Yes sir, when I was called into your office.

Q. And that was many months ago, was it not?

A. Yes sir.

Q. Who was present when I first was introduced to you. Do you recall?

A. I don't really remember. I know I think my sister was with me.

Q. Do you recall if there were any other personnel from the District Attorney's Office that was around?

A. I really don't remember. It's been a while back.

Q. Do you recall what I told you at that time about [669] what you would have to testify.

A. You told me to tell the truth and nothing but the truth.

Q. At first did you indicate to me that you had difficulty with your testimony.

A. Yes sir I did.

Q. What did you tell me?

A. I told you that I had tried to block everything out of my mind.

Q. And what did I tell you in response to that?

A. That I had to put it all together to remember that there was no way of blocking it out of my mind.

Q. And did I tell you why I said that?

A. That I don't remember.

Q. You've stated that you don't drink.

A. Yes sir, I don't.

Q. Why don't you drink?

A. I have a brother that is an alcoholic up in Texas. He is dying with cancer and all. Okay. I also have a mother that drinks. She had quit for Charles Lane's trial but after that she started drinking pretty heavily again.

Q. Do you love your children?

A. I love them very much.

Q. Have you tried to keep your children?

A. Yes sir I have.

Q. Do you care about the health of your children?

[670] A. Yes sir I do. Can I say something. Right after Charles Lane's trial, well the day before I came on



the stand for Charles Lane's trial I brought my youngest son to a doctor for a cold. All right. I came to Charles Lane's trial that Thursday was my last testimony. That Sunday night I had my youngest son in the hospital with bronchial pneumonia. They had him under oxygen, under an oxygen tent and they had to wind up putting him in isolation and I almost lost him and if that's not love for a child I don't know what it is.

Q. How did you know Frances Arwood?

A. She was my ex-step-sister-in-law. She was married to my step-brother.

Q. I show you a letter, September 19, 1979. Who is this letter written to?

A. My sister-in-law to me.

Q. By whom?

A. My sister-in-law, Frances.

Q. And what was the basic content of that letter?

A. Sir?

Q. What was the basic content of this letter?

A. She wanted me to try and talk my nephew into going to a class reunion dance because she even said how about that, after two marriages I'm still looking for someone.

Q. What did you tell her?

[671] A. I told her that I would talk to my nephew about it.

Q. Did she in fact date your nephew, Tommy Champagne.

A. I don't know if you could call it dating or not but he went and picked her up and brought her to the house that night.

Q. Why was she staying at the house?

A. Well he brought her to the house that night, she wanted to see my mother. She didn't, she hadn't seen her in a long time. She still considered my mother as a mother-in-law and she had never met my youngest son and she wanted to see the children and she come [sic] over and my nephew was having car trouble and it wouldn't start so he couldn't bring her back home and again Robert Sawyer said he didn't have the gas to bring her there so Mother said she could spend the night at the house. Well they were drinking that night and that night my mother broke her nose and wound up in the hospital and Fran said she would stay there to help me take care of the children so I could run back and forth to the hospital.

Q. Cynthia, describe your state, your mental, emotional and physical state when you went to the police station to give your [672] statement to Detective Geiling.

A. I was pretty well a nervous wreck.

Q. At that point in time were you thinking about Robert Sawyer's sister, Glenda White or his brother-in-law, Mr. White?

A. No because I didn't even know they were going to contact me or they knew about it.



Q. Were you thinking about his grandparents, his grandmother?

A. Not really I wasn't.

Q. What was on your mind?

A. All that was on my mind was they had taken, Robert Sawyer and Charles Lane, they had done something to a girl, a human being that should not have been done to anybody because Frances did not deserve that.

Q. Did Robert Sawyer in fact speak to you at the police station?

A. Yes sir he did when he passed by me.

MR. WEIDNER:

Objection, Your Honor.

MR. BOUDOUSQUE:

On what basis?

MR. WEIDNER:

I request the jury be removed.

MR. BOUDOUSQUE:

I withdraw the question.

MR. BOUDOUSQUE:

Q. When you gave this statement what was on your [673] mind?

A. Telling the truth as far as I could remember, only a few things I left out. That's all.

Q. You were pretty well emotionally shook up?

A. Yes sir.

Q. The time of this statement is what?

A. I can't read it.

Q. Do you recall how many hours after the incident you gave this statement?

A. I don't really remember that either.

Q. Was it a long period of time?

A. I don't know. I think we were there until after dark if I'm not mistaken.

Q. Not how long you were there but when did you first give your statement?

A. I don't remember because my watch, Robert Sawyer had it in his pocket and I never got it back so I didn't have a watch on me.

Q. In this letter when Mr. Weidner questioned you it says Bobby, right now I could not tell you what is in my statement because I really don't know. This letter was written on October 11, was it not?

A. Yes sir.

Q. At that point in time do you recall the first time you had reviewed your statement given to Detective Geiling?

A. I had reviewed it after I gave it to him.

Q. Right.



[674] A. When I went before the Grand Jury.

Q. And what date was that?

A. That I don't remember either.

Q. Was that before or after this date?

A. I think it was after but I'm not sure.

Q. Do you recall the date that Frances Arwood died?

A. November 21st.

Q. And did you go in front of the Grand Jury for an attempted murder or for a murder?

A. I don't remember. I think it was murder if I'm not mistaken.

Q. So it would have had to be after the date that she died, correct?

A. I think so.

Q. This date is what?

A. 10-11-79.

Q. Is that before or after Frances died?

A. That's before she died.

Q. So you had not read your statement until you went to the Grand Jury according to your testimony.

A. That is right.

Q. Do you recall reading the statement with anyone in the District Attorney's Office?

A. After the Grand Jury, in the D.A.'s Office, yes sir.

Q. Did you and I go over your statement?

A. Then, yes sir.

[675] Q. Did that help you to refresh your memory?

A. Some but I had pretty well, some of the pieces I had put together, there was different parts I didn't remember, even during the Grand Jury when I went before them I knew from the middle to the end but I couldn't remember the beginning.

Q. Why couldn't you remember the beginning?

A. I tried after it happened to just try to block it out of my mind. I had two children to raise.

Q. Okay now it says in this letter on page 2, Bobby, right now I couldn't tell you what is in my statement because I really don't know. Is that factually accurate, is that a correct statement?

A. I didn't know what was in the statement at the time because I didn't remember.

Q. The state I was in I am trying to put all the pieces together myself right now. All I know for sure is that boiling hot water was poured on her.

A. That's right.

Q. As far the lighter fluid I don't know about that. All I know is that if I wouldn't have went and called mom to see how she was and tell her later on that we would be up there maybe I could have stopped it or maybe be right along side her. I really [676] don't know. No one deserves



what happened to her, whether they wanted it or not. Don't get me wrong, I'll love you always and I will never stop. You were six months of my life and the boys'. We have had our bad times and we have had our good times but baby you don't remember hitting me or threatening me. You say you really don't know about the lighter fluid, about the woman being set on fire. Did you actually see anyone set Frances Arwood on fire?

A. No sir. All I know is what Robert Sawyer and Charles Lane had told me.

Q. Where were you when she was set on fire?

A. In the bathroom.

Q. And what did Robert Sawyer and Charles Lane, Robert Sawyer tell you?

A. They had told me that Charles Lane said that Bobby had set them on fire and that is when Bobby got up and said nobody told you to stay inside of her when I told you I would show you how hot pussy could get.

Q. So you did not yourself observe the actual action of Robert Sawyer setting Frances Arwood on fire.

A. No sir I didn't.

Q. Is that what you meant in that letter right there?

A. Yes sir. I didn't see.

[677] Q. Are you concerned about your children?

A. Yes sir. I love them very much.

Q. Are you concerned about what these events may or may not have done to your children?

A. Yes.

Q. Explain the impact, the emotional impact this crime may have had on your children. Describe your feelings about your children after this crime.

A. I love them and it took me a good while to get my oldest son calmed down from it but he has some memories of it whenever water is spilled on the floor it all comes back to him.

Q. What does he do?

MR. WEIDNER:

Objection, Your Honor.

THE COURT:

What is the purpose?

MR. BOUDOUSQUE:

To show that she cares about her children and that she has tried to take action to get her children to forget what has happened. That she herself has blocked this incident out of her head and Mr. Weidner has tried to attack this woman's credibility because she doesn't remember or doesn't recall and I think it's important the jury know what actions Mrs. Shano took [678] after this event took place.

MR. WEIDNER:

I can understand that the woman loves her children.

THE COURT:

What question did you ask?



MR. BOUDOUSQUE:

I asked her what were the children's reactions after this incident and what did she to do [sic] counteract that action.

THE COURT:

That is two questions.

MR. BOUDOUSQUE:

One was going to follow the other. My question was going to be what have the children done since this incident.

THE COURT:

You can answer that question.

THE WITNESS:

Well the baby, he was still young. He was only two years old so he got upset because they both love their Aunt Fran, they called her, but the oldest one, he took it more because he was older and it took us a while to get him calmed down, to show him we love him and to talk to him and everything and I even lied, telling him his Aunt Fran would be all right and then when she died I had to sit down and [679] explain to him she was in heaven and nobody would hurt her again.

MR. BOUDOUSQUE:

Q. How old was your son at the time, your oldest son at the time of this incident?

A. He was only four years old.

Q. Do you recall if you spoke to the police after this incident?

MR. WEIDNER:

Objection, Your Honor. May we approach the bench.

(Bench conference between the Court and Counsel.)

THE COURT:

You can answer the last question either yes or no.

THE WITNESS:

I think it was the next day, Detective Livaudais.

MR. BOUDOUSQUE:

Q. Just a measure of caution, don't go into any statement. Do not go into the contents of the statement, just say if the statement was given and when it was given to you.

A. Yes. My oldest son did give a statement and I believe it was the day after the incident happened.

Q. And how old was he at this time?

A. Four.

[680] Q. Cynthia, how well do you know Gladys or Glenda White?

A. I've never met the lady.

Q. How well do you know her husband?

A. I have never met him.

Q. And how well do you know the Defendant's grandmother?



A. I met her one time.

Q. What did they tell you when they spoke to you on the telephone. Let me limit that question. What did Mr. and Mrs. White tell you when they were on the telephone?

A. It was mostly telling me to change my statement, that my statement could hurt her brother and then they got up and accused me, I was trying to have him convicted because he had come into some money when he turned twenty-eight or twenty-nine. Okay. They thought that he turned the money over to me, give me power of attorney which I didn't know about.

Q. Where was Robert Sawyer going to come into some money?

A. In Memphis or Middleton, something when his mother died she left the money and she [sic] couldn't get it until he reached a certain age. That's what I was told.

Q. What is the Defendant's occupation?

A. He told me that he is a pilot on a boat.

[681] MR. BOUDOUSQUE:

I have no further questions.

RECROSS EXAMINATION

MR. WEIDNER:

Q. Cynthia, in your letter to Mr. Sawyer, you said but baby you don't even remember hitting me. Didn't

you write that because you knew at the time this happened Bobby was so drunk he couldn't remember what happened?

A. Not really. Bobby had even tried –

Q. You can explain your answer but answer yes or no.

MR. BOUDOUSQUE:

I think she said not really.

THE COURT:

Answer the question.

THE WITNESS:

When we were in Texas Bobby tried strangling me and then he stopped, about a block or block from where we had lived at. He had even threw a knife at me in somebody else's house, broke the knife and busted up their table in Nederland Texas.

MR. WEIDNER:

Q. Now will you answer my question. I believe you wrote that because you knew Bobby was so drunk the day this incident occurred he couldn't remember what happened.

[682] A. I really don't know because I don't know if he wanted to remember or didn't want to remember. I can't answer yes and I can't answer no.

Q. You stated you don't even remember in your letter.



A. That he didn't remember, right.

Q. That's what you said, baby you don't even remember. Didn't you write that because you knew he was so drunk he couldn't remember?

A. I cannot answer yes and I cannot answer no because I would be lying.

MR. WEIDNER:

Thank you. I have no further questions.

MR. BOUDOUSQUE:

Q. Cynthia, how would you describe these letters?

A. What do you mean?

Q. Business letters?

MR. WEIDNER:

I object to this, this is redirect. I went into nothing on this on recross examination.

THE COURT:

If that is the basis the Court overrules that objection.

MR. WEIDNER:

Note my objection.

[683] (Bench conference between the Court and Counsel.)

MR. BOUDOUSQUE:

Q. This is the letter of January 7, 1980. I will not read the entire letter, just some excerpts. Dear, just

thought I would drop you a few lines to let you know I haven't forgot about you and also to let you know I am still thinking of you and that I love you. I know that you don't want to hear from me or it sure seems to me that way because you don't want to write me anymore. Be sure to give Wayne and Troy a kiss for me. I will send them all my love. In these letters does Robert Sawyer, does he speak of how much he loves you?

A. Most of them, yes sir.

Q. Does he speak about how much he cares for you and the children?

A. Yes sir.

Q. Does he speak about how he's a changed individual?

A. Some of them, yes. That's when he started going to church.

Q. Does he tell you that he wanis you to stand by him?

A. Yes sir. He started that from the beginning.

Q. And you had testified to that fact, have you not on direct examination, that at all [684] times Robert Sawyer has told you you had his life in your hands.

A. That is right.

Q. That's your testimony, it's very important to him, is it not?

A. In fact according to what he had been telling me and his sister and his brother-in-law, yes sir, they all put it in my hands as they put it.



Q. At any time in these letters did he try to minimize his actions on September 28, 1979?

A. If I recall he tried putting all the blame on Charles Lane.

MR. BOUDOUSQUE:

I have no further questions.

MR. WEIDNER:

No further questions.

(Recessed for lunch at 1:00 p.m. Jury excused. Reconvened at 2:20 p.m. Polling of the jury was waived by both the State and the Defense Counsel.)

[796] DOCTOR ALBERT B. DE VILLIER, 2731 Chestnut Street, New Orleans, Louisiana, was called as a witness by Counsel for the Defense and after first being duly sworn was examined and testified as follows:

VOIR DIRE EXAMINATION

MR. WEIDNER:

Q. Doctor Devillier, would you state your occupation for the Court please.

A. I am a physician and I practice psychiatry.

Q. Would you give us some of your background in the field of psychiatry.

A. Yes. I have been licensed, a licensed physician in the State of Louisiana since 1966. I finished LSU Medical School and after that I completed an internship at Charity Hospital, then after that two years residency in pediatrics. After that I was hired as a physician by the Department of Psychiatry, LSU School of Medicine, for one year and following that I did a three year residency in psychiatry and I completed that residency in 1973 with LSU School of Medicine. I haven't taken board exams but I am qualified for the boards since 1973. I have worked for the State of Louisiana under Civil service employ and I have worked primarily at the West Jefferson Mental Health Clinic. For a while I did [797] for a short period of time at the New Orleans Mental Health Center. I am in the private practice of psychiatry since 1973 and I have also testified in court since about 1973 or '74 in regards to sanity hearings.



Q. Excuse me, Doctor, can you explain what you mean by testifying in regards to sanity hearings.

A. Very often in court they will have what is known as sanity hearings for individuals who may have or there might be some indication of some mental problem and a sanity commission is appointed and this commission has to consist of two doctors, preferably psychiatrists.

Q. Doctor, are these persons charged with criminal offenses?

A. The sanity hearings that we have been doing, yes, have been individuals with criminal offenses, yes. Additionally I do a lot of work for Associated Catholic Charities in the way of consultation in terms of children's homes and etc.

Q. Doctor, when did you first begin doing sanity hearings and dealing with people charged or allegedly charged with criminal offenses?

A. I think that is approximately 1974. I can't be definitely sure. Approximately 1974 and [798] all of them consisted in the Twenty-Fourth Judicial District Court except for one in the Twenty-Second Judicial District Court in the State of Louisiana.

Q. Do you have a particular expertise in the field in dealing with persons charged with criminal offenses?

A. No sir, other than this experience that I have had and my own interest in that particular field of forensic psychiatry.

MR. WEIDNER:

I would offer the Doctor as an expert in the field of psychiatry.

CROSS EXAMINATION

MR. BOUDOUSQUE:

Q. Doctor, are you board certified?

A. No.

Q. Have you taken the oral test or the written test?

A. No sir.

MR. BOUDOUSQUE:

I have no further questions.

THE COURT:

The Court accepts Doctor DeVillier as an expert.

DIRECT EXAMINATION

MR. WEIDNER:

Q. Doctor, in connection with your being a physician and a psychiatrist have you [799] examined one Robert Sawyer?

A. Yes I did.

Q. Pursuant to your examination of Mr. Sawyer, were you able to arrive at any psychiatric diagnosis?

A. Yes I did. I don't have a copy of that particular report.



(Counsel hands document to witness.)

MR. WEIDNER:

Q. The document is signed by yourself marked June 10th, do you remember that?

A. Yes I do. Are you asking me at this time the psychiatric impression at that time?

Q. Yes.

A. It is my impression on that examination that Mr. Sawyer was legally sane and he knew right from wrong and was mentally competent and that he understood the nature of the charges against him and was able to assist Counsel in his own defense.

Q. And that was at the time you made your examination.

A. Yes sir.

Q. Doctor, if I were to give you a hypothet based on the facts which are presently in evidence in this trial as to certain actions done by Mr. Sawyer at a time in September of 1979, in connection with your examination of him and the hypothet I am [800] giving you, would you be able to render an opinion as to his condition or mental condition at the time this incident occurred.

A. I can render an opinion but again this wouldn't carry as much value as examining him right at the time of something occurring.

Q. I understand, none of us was there. Doctor, on approximately September the 27th, 1979 at some time around the time of 8:00 o'clock in the evening, Robert

Sawyer went out to various lounges and began drinking. He drank a combination of MD 20/20 wine, shots of straight whiskey, beer, continued drinking without sleep from say approximately 8:00 p.m. in the evening, all night, his condition has been described at approximately 7:00 a.m. the next morning on September 28 when arriving home he was staggering drunk, barely able to walk.

A. What time?

Q. Approximately 7:00 a.m. in the morning. This is after being drunk all night long, continued to drink MD 20/20 wine at that time. At some time during the next five to six hours some very heinous acts occurred. At approximately 1:30 in the afternoon Robert Sawyer was described as sitting on the floor with his legs crossed [801] looking glassy eyed and appearing to be in a stupor. This description given by a lay person such as myself, not by any physician.

MR. BOUDOUSQUE:

I would object to his being in a stupor, stupor being a subjective term and there is no evidence as to how intoxicated the man may have been. I would like to know what witnesses said he was in a stupor.

MR. WEIDNER:

Your Honor, Miss Sylvia Champagne testified Mr. Sawyer was sitting on the floor cross-legged looking glassy eyed.

MR. BOUDOUSQUE:

She didn't say glassy eyed.



MR. WEIDNER:

She also gave that statement to the police officer.

MR. BOUDOUSQUE:

I will withdraw it for the purpose of this hypothetical. I will withdraw my objection.

THE COURT:

Go ahead with the questioning.

MR. WEIDNER:

Q. With the facts given to you from that hypothet, Doctor, can you render an opinion as to the [802] condition you believe Robert Sawyer was in during the time.

A. Well based on this information it is very possible a person under a great deal of alcohol and drinking continuously and assuming that the condition described is described by a person is fairly reasonable, a fairly reasonable individual who can assess the situation, you could see he was somewhat of a toxic psychosis. That he was probably, you can't say definitely, but that he probably was suffering with a toxic psychosis.

Q. What is a toxic psychosis, Doctor?

A. First let's use the word psychosis. Psychoses would be an individual who would have a thought disorder. The thinking is terribly disturbed. He may or may not be hallucinating. Hallucinating means he may be hearing voices that aren't there. He may be seeing things that aren't there. He may be delusional. He may be irrational in his behavior. He may develop irratic behavior. Now toxic, we use as a word to describe the cause of the

psychosis and what he has within his blood is a toxin which gets to the brain, gets to the brain and creates the disturbances that causes the actions you might see or the [803] hallucinations. You can consider alcohol a toxin. We often use this term to describe individuals who are suffering with a psychosis secondary to alcohol, to drugs, to a medical condition. They may have kidney disease and have elevated blood urea, nitrogen for instance, various states that is caused by a toxin. It might be infectious. It might be something caused by some type of pneumonia or meningitis they have in their body and so we use the two terms, toxic and psychoses.

Q. Doctor, a person who is suffering from toxic psychoses is it possible for them to form an intent or to actively desire something to happen?

A. If you make the diagnosis of toxic psychoses it would hardly be likely that that person could form intent to do anything but he is liable to act out in a number of different ways. What you are doing in this situation you are releasing impulses that a person may have. In other words, whatever may come to mind they may do. There is a release of the things that controls those particular impulses. Mostly in regard to behavior or maybe in regard to thinking.

Are they in control of that or is the disease in control of that, the psychoses?

[804] A. I don't understand your question, it's too separate.

Q. Is their conduct precipitated by the psychosis?



A. The conduct is precipitated by the psychosis. The psychosis is a descriptive term to describe behavior, thinking, of that particular individual. The behavior that goes array or disarray is caused by the toxin that settles in the brain.

Q. Now Doctor, in layman's terms could a person in this state, in other words in the state we have described with this amount of alcohol be in a stupor, I'm talking about the layman's definition of forming an intent or actively desiring something to happen, could they do that?

A. If you describe a person having the toxic psychoses it is highly unlikely they would be able to do that. Then you have, they could form intent in doing things, their behavior would not be erratic. They could have planned out behavior.

MR. WEIDNER:

Thank you, Doctor. I have no further questions.

CROSS EXAMINATION

MR. BOUDOUSQUE:

Q. When did you originally examine the Defendant?

A. According to my report I examined him in [805] Jefferson Parish prison on June 9, 1980.

Q. And is that the only time you examined him during the course of this last year?

A. Yes sir, that is the only time.

Q. And how long did you examine him?

A. I don't have a record. I think when we did the sanity hearing I probably gave an indication at that time as to how long I spent with him. Usually in these examinations they will sometimes last, they usually last at twenty to thirty minutes but sometimes longer but in most cases twenty to thirty minutes.

Q. The only time you spent with this Defendant, the only information you have at this point in time in reference to this man is basically the twenty or thirty minutes you spent with him on June 9 or June 10.

A. Yes sir.

Q. And you say an examination. An examination basically in psychiatrict [sic] terms is nothing more than an interview. You didn't do any tests or anything else. You basically went to talk to the man and asked about what he understood, what the nature of the charges were against him.

A. No sir I think there should be some understanding about what we do.

Q. What is a psychiatrict [sic] examination?

[806] MR. WEIDNER:

Excuse me. Would you allow the Doctor to answer the question first.

MR. BOUDOUSQUE:

I think he was going to do that.



THE WITNESS:

These examinations we do are what is required, I think I am not legally, really I don't know but it is required by us as psychiatrists. It is a clinical evaluation we are trained as a medical doctor, you have to be a medical doctor in terms of doing this type of thing. We do a clinical interview during the time we do this clinical interview it consists of asking the individual questions and usually we get some background information. That is a history taking kind of thing which consists of what the individual's past is.

MR. BOUDOUSQUE:

Q. What else do you do?

A. During this time I am observing the way he approaches, the way he answers the question, the affect he shows. The way he organizes, in terms of answering the question or what information he volunteers.

Q. And in this case you examine or you interview the Defendant some ten months after the [807] commission of the crime, did you not?

A. On June 9, 1980.

Q. Okay, what information did you have regarding the Defendant prior to your interview. Did you read any of the police reports prior to your interview?

A. No sir. I never did until recently I read something but not completely read it.

Q. Did you read any of his statements?

A. No sir.

Q. Did you read any letters that he may have written?

A. No sir.

Q. Which would give you indication as to his actions at the time of the crime as well as give you indication as to his present state of mind?

A. The only information I have was what he supplied me.

Q. So you didn't review any of the evidence in this case prior to your interviewing the man.

A. No sir.

Q. So basically a large part of your examination, Doctor, relies on what this man told you, correct?

A. Yes.

Q. And if the factual information given to you is in fact incorrect or if the Defendant was lying you could derive at an erroneous [808] conclusion, could you not?

A. I don't think we are looking for in terms of talking to them as you say talking to them but in terms of clinical examination "lying" to us or not, that is not exactly the basis of our interview.

Q. Basically what you do, Doctor, is you rely on your training and your books and your interview with the Defendant and then you draw a conclusion which is subjective at best.

A. Yes.



Q. There is no objective way known to psychiatry is there not to determine a man's mental state of mind at the time of a commission of a crime.

A. There is no way to at the time of the crime unless I examinae [sic] him right at the time.

Q. Have you not so stated that on previous occasions that you recall testifying at this sanity commission and stating something to the effect there wouldn't be any testing that could bring anything out like that. You would have to be there and have a person examined and I would have to examine the situation and his behavior right at that time.

A. That's vorrect [sic].

Q. So what you are doing now is based on limited [809] hypothet that may or may not contain factual accuracies. You are rendering a highly speculative opinion, are you not, Doctor?

A. I am rendering an opinion based on the information that I was given in the hypothet.

Q. Okay Doctor, now you said based on the hypothet. You knew that you were going to be called to testify today, did you not, Doctor?

A. Yes.

Q. You in fact had spoken to Mr. Weidner on previous occasions, did you not, Doctor?

A. A couple of occasions.

Q. Did he not tell you in this case what his defense was going to be?

A. I think he did.

Q. Did you talk to him or converse with him as to how your opinions would be, as to his defense.

A. He asked me with regard to the same hypothet they have asked right now.

Q. You knew you were going to render based on that hypothet the same opinion you have just given this jury.

A. Yes.

Q. Did you ever ask to see the statement of the Defendant to see his actions two hours after the commission of the crime?

[810] A. No I saw it a few minutes.

Q. Did you ever ask to see over ten letters that were written by the Defendant to a woman by the name of Cynthia?

MR. WEIDNER:

I object to that. He only had the information I gave him.

MR. BOUDOUSQUE:

Your Honor, I think this goes to the weight of this man's opinion and these are very important factual data this man should consider and I think I have every right to ask that opinion.



MR. WEIDNER:

I think the District Attorney should quit badgering the Doctor and give him the statement and see if that changes his opinion.

MR. BOUDOUSQUE:

I'm not trying to badger Doctor DeVillier.

THE COURT:

You can answer the question. You didn't consider any letters anybody might have written.

THE WITNESS:

No sir.

MR. BOUDOUSQUE:

Q. So you weren't shown any letters, were you

[811] shown a copy of the police report?

A. Just a few minutes ago.

Q. Just a few minutes ago but you had already arrived at your opinion before you were shown a copy of the police report had you not?

A. The opinion was based on a hypothet.

Q. Merely on a hypothet with the facts and circumstances as stated to you by Mr. Weidner, correct?

A. That's correct.

Q. In order to have what you call, Doctor, toxic psychosis you are stating the fact that the man would have had to have some type of hallucination or some type of delusion, did you not say that?

A. I said he may.

Q. Is that probable he would have?

A. Not necessarily. In other words, you know, a conglomerate of symptoms.

Q. Didn't you tell this jury based on the hypothet given to you by Mr. Weidner you were of the opinion the Defendant had to have some type of delusions or hallucinations, otherwise he couldn't have committed these acts?

MR. WEIDNER:

We object. The Doctor did not testify to that.

THE COURT:

[812] The Doctor can so answer the question.

THE WITNESS:

Well the only thing I can say I don't recall answering to that.

MR. BOUDOUSQUE:

Q. What did you say about the delusions and hallucinations during the course of your direct examination?

A. In terms of delusions and hallucinations I was describing toxic psychosis,

Q. Describe toxic psychosis again if you would please.

A. Could we read it again?



THE COURT:

Describe it.

MR. BOUDOUSQUE:

I would prefer the Doctor give his own definition.

THE WITNESS:

I would say divided up in two parts. Psychoses is an alternate state of mind. A thinking or thought disorder.

MR. BOUDOUSQUE:

Q. Now does a person if he has a psychoses when would you determine an individual had a psychoses if he had it, does he always have it?

A. No sir, not necessarily.

Q. What brings on a psychosis?

[813] A. When we are talking about toxic psychosis?

Q. I'm talking about psychosis period, any type of psychosis. What are some of the reasons an individual becomes psychotic. What brings on psychosis?

A. In schizophrenia patients.

Q. Is Mr. Sawyer evidenced any signs of schizophrenia, do you know?

A. No.

Q. At the time of your interview did he evidence any signs of any type of psychosis to you?

A. No sir.

Q. In fact, Doctor, have you not so stated in your report that he denies having any type of hallucinations and delusions and there is no evidence of any thought disorder.

A. That's correct.

Q. So if there is no evidence of any thought disorder, Doctor, at the time you examined him, well obviously there could not be any evidence of any type of psychoses at that point in time.

A. Right.

Q. Doctor, in fact in your testimony in June, June 12th, 1979 under oath didn't you so state you observed no evidence of any type of psychoses, toxic or otherwise of the Defendant at the time of your examination.

A. That's correct.

[814] Q. Now Doctor, when an individual has a psychoses or a toxic psychoses I believe you have stated, he would not be able to formulate intent.

A. Well I think that would be one of the basis of saying a person is psychotic or suffering with a toxic psychosis. He would be in such a stupor state of mind that you would have an alternate state of mind. He would be acting more on impulse rather than forming an intent of what he is going to do.

Q. If a person acted over an extended period of time and did various and sundry actions, would that indicate to you he knew what he was doing and was not suffering from a psychosis?



A. No sir. It would have to be based on what were his acts and what was his behavior part of the psychosis, part of the behavior might be rather bizarre behavior.

Q. Would he remember?

A. He may or may not. In toxic psychosis it's highly likely he may have some difficulty. He may remember bits and pieces, the state of mind might vary according to the various things that are affecting this man.

Q. Basically a man who would suffer from a toxic psychosis would only recall the events in [815] bits and pieces and would only have an accurate memory of what transpired?

A. I didn't follow that total question.

Q. Didn't you say, Doctor, if an individual was suffering from toxic psychosis more than likely, probably the only way he would remember an event would be in bits and pieces.

A. That could happen, yes. I'm not saying definitely. It's not definite. It depends on the amount of toxin in the blood. I assume, and the effect it has on the brain at that particular time, the levels may go up and down.

Q. So there is a whole lot of subjective factors, is that no correct, Doctor. All these factors that you have just described have to go to your evaluation.

A. Right.

Q. So based on his limited hypothet given to you by Mr. Weidner without any type of consideration for all those factors you are going to tell this jury that man could

not have possibly intended his actions on the day of the commission of the crime.

A. I am not saying anything about this man. He gave me a hypothet.

Q. Doctor, you are telling all about what this man did and you rendered an opinion based on [816] that limited information. Doctor, if an individual was suffering from toxic psychoses [sic], would he recall with specificity or would he recall with accuracy certain events that had occurred over an extended period of time. That is highly improbable, is it not?

A. That's correct.

Q. Now Doctor, I'm going to show you a statement that you have not read that was given by the Defendant. I want to show you bits and pieces of it at approximately two hours from the time that he had allegedly suffered from this psychoses. [sic] Okay. When a person suffers from a psychosis how long would an individual suffer from a psychosis, an hour or two hours or ten hours?

A. I don't think there is any specific time limit.

Q. Well what would be the normal?

A. Well I don't think there is any normal. Maybe over a matter of seconds, a matter of days or months.

Q. All right, do you think a man that was suffering from psychosis would understand questions that were asked to him?

A. No, not completely, no.



Q. Do you think if he said, it says here Question: Are you able to read, write and understand the English language. Yes. Have you been [817] advised –

MR. WEIDNER:

Excuse me. I think the District Attorney ought to tell the Doctor at what time and place that statement was taken.

MR. BOUDOUSQUE:

I believe the statement was given two hours after the alleged psychoses [sic] and that was what I was going into. 4:01 p.m.

THE WITNESS:

All right.

MR. BOUDOUSQUE:

Q. The crime occurred anywhere from in the morning sometime before noon to approximately 2:00 p.m. At 2:00 p.m. or thereabouts that is when the Defendant was in this so-called alleged stupor. Now that stupor, before I get into that statement, in Mr. Weidner's hypothet the fact the man was in a stupor would be a very important consideration for you, would it not, very important.

A. Right.

Q. If a man was in a stupor would he be able to understand another person talking to him?

A. Not necessarily, no sir.

Q. Would he be able to speak in a coherent fashion?

A. No.

Q. Would he be able to talk in a normal fashion?

[818] A. No.

Q. Would he be able to respond to commands of a police officer if he was in a stupor?

A. Well I am saying no but of course I am qualifying that and saying you are talking about various levels of stupor.

Q. Everything is qualified here, Doctor. You are really trying to do an opinion to something there is really no way you can know what it's all about.

A. I'm only giving an opinion because I was asked.

Q. I can appreciate that but I think you can appreciate what I have to do. So Doctor, if a man, have you ever seen a man in a yoga position?

A. Yes.

Q. Well people do exercise, yoga and some people find that position relaxing, correct?

A. I guess, yes sir.

Q. It may not be relaxing to you but it may be to some people. Let's say that was a relaxing position for Mr. Sawyer. He may have been feeling some type of gratification and he was sitting there just enjoying himself. Would that change your hypothet, Doctor?

A. Well you know if someone who observed him, he was sitting there, he was enjoying himself of course it would change it. If it's [819] based on an accurate opinion



but you know, a person who is fairly reasonable and can evaluate the situation, when you ask about what kind of evaluation we do, that is part of our clinical evaluation, the way a person is acting.

Q. Doctor, I understand but it would change your opinion if you were told this man when asked my God what did you do to this girl, he just shook his head and pointed to another individual, that is kind of a coherent type of action when you shake your head and point directly to someone else.

A. It depends on how coherent.

Q. Right. Right. Okay and if about five minutes after that a policeman came and ordered the Defendant up from a chair which he had gotten into from his position of sitting on the floor and got into a chair and he extended his feet on a mattress again which would indicate a relaxed position, if he was ordered out of that residence and he listened to that command and walked out in a normal fashion, and if understood his rights and indicated he understood his constitutional rights, that would change your opinion, would it not?

A. It would change the opinion as to how he was acting at that time, it sounds like he [820] could respond.

Q. So what you are saying the only way he could not, that he could be suffering from toxic psychosis is if he couldn't respond, right?

A. No. He could be suffering from toxic psychosis and respond. It depends upon, you know, a total evaluation, just responding to one command or just walking

straight doesn't necessarily mean a person might not be in a psychotic state.

Q. I thought you said a person could not be in a stupor if he walked in a normal fashion and he spoke in a normal fashion and he was coherent as we all are.

A. No, then he couldn't be in a psychosis, no.

Q. And a very important element in your decision is the fact the man obviously had to be in a stupor, correct. Didn't you just testify an important part or important element of your consideration –

A. Yes, that is an important element.

Q. Now I want to read some excerpts of a statement that was given by the Defendant about two hours after he was to have been in that alleged stupor. The stupor described to you by Mr. Weidner. The man was advised of all of his constitutional rights and he said he understood them. He sat and smoked a cigarette. Lit the cigarettes of his own [821] free will, wasn't quivering, wasn't shaking indicated that he understood everything that was happening. There was indication he was aware of his surroundings and the statement he was giving. He was somewhat fatigued but he was alert and it was very important to him that he not use as much vulgarity in his statement as he may have originally went into, would that change your opinion, Doctor?

A. I didn't understand if you are asking me would it change my opinion about what. Are you asking me what would I consider with that type of information, what would be his state at the time. It would not sound like he was suffering with a psychosis.



Q. Right and if he got there and said upon the interview she gave my two adopted kids, they are not exactly my kids, yet I'm supporting them, she gave them dope. He's talking about why he did the acts he did, the acts he's accused of doing, then I got mad and I hit Fran in the jaw and asked her what the fuck she was doing giving my kids some pills and I told her not to do it again. Is that the type of statement of a man relating to a factual even that occurred earlier that evening sound to you like a man suffering from a psychosis?

[822] A. At the time he was giving the statement?

Q. Based on the statement, does that sound like a man who suffers from a psychosis at the time of a crime?

A. It depends on the information given, how accurate it is.

Q. This was given by the Defendant and then he goes on to say then I backhanded Fran and I told her not to give her [sic] any of my kids any frigging ass medicine which she said she didn't and I cooled off and Fran was bleeding from the cheek and corner of the mouth. He recalls this victim, Cindy went in and got three bottles of MD 20/20. He recalls the fact he started drinking again and Fran started throwing up. He recalls at the time of the crime the victim was throwing up. I told her to go take a bath. He recalls his command to the woman and she went into the bathroom and this other fellow we brought home with us, he started pouring cold water over her. He recalls that factual reality. Would that change your opinion somewhat?

A. That is a factual reality.

Q. This is by the Defendant himself. Don't you think that is very important information?

A. That depends on what he says is accurate.

Q. Well Doctor, isn't that true in all circumstances?

[823] A. Of course.

Q. And then he says then I poured pans over her myself and it looked like she was coming out of it. I went where Cindy was and sat down. I heard this other fellow hitting Fran. He recalls the other fellow punching. Does that sound like he was suffering from hallucinations or delusions?

A. No.

Q. But her head was under the water and this other fellow was hitting her in the back and I made him stop it and I grabbed Fran by the head of the hair and yanked her out of the tub onto the floor. Cindy brought the blanket in and we covered her up. Again the same question, is that a little more information that could help you change your mind, Doctor?

A. About what?

Q. About whether the Defendant was suffering from a toxic psychosis at the time this crime was committed.

A. What are you basing it on, on the information he is giving or what he is saying actually occurred or what actually occurred?

Q. Doctor, I wasn't there nor were you. The only thing I'm basing my comments to you on is strictly a



statement made by one of the [824] people that were there, by a person that is allegedly suffering from toxic psychosis and I ask you based on these statements he gave are you still of the opinion at the time of the commission of the crime this man was suffering from a toxic psychosis and I think this is evidence, Doctor, I think you should consider this before reaching your decition, [sic] should you not?

A. Yes.

Q. And then he goes on a little while later, this other fellow went into the kitchen and got a can of lighter fluid and poured it on Fran from her right breast to her pussy and then he lit the lighter fluid. Now Doctor, how would an individual if he didn't know if he was not in his right mind, if he didn't intend what he was doing, if he was suffering from this so-called toxic psychosis, how would he know that the other person put it on her, put it on her right breast down to her vaginal area. I mean that is somewhat inconsistent, would you not say, Doctor, from someone to be suffering from toxic psychosis and actually know where the lighter fluid, what point on the victim's anatomy it was poured down from.

[825] A. Does it sound as though during the act that he was psychotic at the time or suffering –

Q. I'm talking about at the time.

A. The particular acts, the total acts you are describing certainly sounds like it is a rather bizarre type of thing you may see in a toxic psychosis.

Q. I wish you'd answer my question. My question is if an individual could recall another person or so he says

another person is pouring lighter fluid from the right breast down to the vaginal area and he remembers this two hours later, don't you think that is important evidence to consider that if this individual is suffering from a toxic psychosis?

A. Yes it is.

Q. Would your professional opinion be that of someone, if someone can talk with this type of accuracy that more probably than not he was not suffering from a psychosis?

A. Right.

Q. Doctor, I can go on and on, where it talks about the woman bobbing up and down in the bathtub and where it talks about where he went to drink. Now Doctor, I think this would be considered an important piece of paper that wasn't given to you by Mr. Weidner, his statement. He said me and [826] Cindy started drinking about 9:30 p.m. the night before. I had one draft beer, about five slugs from a bottle of wine, five shots of Jack Daniels and about ten beers. My question again, was it, in what point did this man become so totally inebriated, toxic psychosis took affect and caused him to use the intent to commit such heinous acts that he committed.

A. I don't know.

Q. So basically, Doctor, and I do appreciate your testimony, is it your opinion as to whether or not the Defendant was suffering from a psychosis is strictly based on the limited hypothet given to you by Mr. Weidner and it didn't take into consideration the statement of the Defendant or anyone else or any letters



written by the Defendant or any other information that may have been pertinent and important to you to arrive at your opinion.

A. No sir.

MR. BOUDOUSQUE:

I have no further questions

REDIRECT EXAMINATION

MR. WEIDNER:

Q. Doctor, you are correct, I did not provide you with a statement and I did not provide you with any other information. What I had [827] done was ask you a question and you gave me an answer, is that correct?

A. That is correct.

Q. Now here is this entire statement that Mr. Sawyer gave to the police. I believe you also stated in response to questions by Mr. Boudousque that you have now had an opportunity to review police reports and other information.

A. Not carefully, I must say, just briefly.

Q. But you have been able to briefly go over them?

A. I would say very brief. That was right prior to coming in here.

Q. Would you like to review that statement at this time?

A. (The witness complies.)

Q. You have had a chance to review that?

A. I read most of it right before I came in here.

Q. Now added information you have with that statement and the brief review of the police report and other stuff to the information I gave you on the hypothet, does that change your opinion?

A. It doesn't.

Q. You describe bizarre behavior, the incidents occurred that are described in that statement, would you consider them bizarre behavior?

A. Yes sir. I would say a person – One important [828] thing I didn't mention in all this, of course, I may have, I am not sure, a person suffering with a toxic psychoses acts more on his impulses. In other words, he has no or he has less control of his impulses. That will vary depending on the toxic state that particular individual is in and he will have various thoughts that will come into his mind. He will have less control over his actions on those thoughts in a toxic psychosis and usually that is what leads to a lot of bizarre behavior. The manifestation of the personality of the individual will determine to what extent the actions he might take in his toxic state.

Q. The behavior described in there is consistent with bizarre behavior, consistent with a psychosis.

A. Yes sir I would say so.

MR. WEIDNER:

I have no further questions.



RECROSS EXAMINATION

MR. BOUDOUSQUE:

Q. What is a social-pathic personality?

A. Usually we describe these individuals as the type of person who the most common thing is they constantly are in trouble with the [829] law. They usually show very little in the way of affect which is something we try to measure by our clinical evaluation.

Q. They know what they do but they don't give a damn one way or the other in terms of society, is that correct, Doctor?

A. Yes sir. They do know right from wrong.

Q. They don't have basically what we would know as a conscience. There type of people, these type of people could inflict as much misery, suffering and agony on other people and not affect them.

A. In varying degrees.

Q. You have stated people like this, I've read some psychology books and I think they tried to describe people like Adof [sic] Hitler, people could commit horror. They are somewhat of an antisocial personality, do you not think.

A. I don't what [sic] to comment on Goering and Hitler.

Q. Frankly so I withdraw it but basically, Doctor, there are people?

A. We see them all the time, yes sir.

Q. You do see them all the time?

A. Yes.

Q. And basically that is a manic personality, they just do not care about the morals or about the principles that dictates society. They don't want to live within the realm [830] of society, correct?

A. Well to put it another way you get from society as much as you can without input.

Q. In terms of what gratifies them without the consequences.

A. That's correct.

Q. Have you had the occasion to talk to Doctor Arneson about Robert Sawyer?

A. We have discussed it at various times.

Q. Are you aware she considers him somewhat of an antisocial person?

A. Yes

Q. Do you also consider him?

A. I don't have any, I can't remember exactly my history but I would think that it is in various degrees and of course he has a history of drinking quite a bit and wandering around and not having a stable kind of life or whatever.

Q. So basically, Doctor, would you not say it is more probable than not that it would take a sociopathic personality to commit such a horrendous crime.



A. I would think it would be more likely but let me say this. Other types of individuals and people with mental disorders could commit such a crime.

Q. But you did not diagnose Robert Sawyer as having a mental disorder.

[831] A. No.

Q. Of that type?

A. No.

Q. Doctor, what is a sadist?

A. It is an individual who inflicts and enjoys inflicting pain on others.

Q. There are such people are there not?

A. Yes sir.

Q. Would a sadist also be considered an antisocial?

A. They may. They may or may not. You, know, people may manifest various symptoms, you know, and not necessarily could be very sadistic and not necessarily be antisocial.

Q. I want to read you a statement from Doctor Arneson and answer me if you would agree with this. What is a sociopathic personality. This is a personality you frequently find in prison settings. These individuals have great problems in superego, by that I mean conducting themselves by rules of society. They are usually very impulsive. They do what they feel like doing. They have low frustration tolerance, no guilt or feelings of guilt. If they do perform some act which is in opposition to society or this type of thing. Would you agree with that?

A. Yes sir.

[832] Q. From studying or from your clinical interview with Robert Sawyer, would you say he has a super-ego. Have you discussed that fact?

A. No I haven't discussed that particular fact but when you are talking about a sociopathic personality you are talking about super-ego. What we talk about is super-ego equini (spelled phonetically). It doesn't establish someone, someone does not have a super-ego when we talk about the super-ego – Like a squeegee, it has a lot of holes in it and therefore I think it is very important to understand.

Q. Doctor, I'm out of my realm of expertise.

MR. WEIDNER:

Allow the Doctor to explain his answer.

MR. BOUDOUSQUE:

I would like to withdraw my question and there will [sic] no need for an answer.

MR. BOUDOUSQUE:

Q. Doctor, my point, are there not such people that can commit such bizarre circumstances as Robert Sawyer has been accused of committing and in fact enjoy inflicting this type of pain and suffering on another person.

A. Yes sir.

[833] Q. In fact aren't there such people that when they do these type of acts they get certain types of sexual gratification although they may not have any physical



activity, any physical active intercourse but by inflicting and degrading and dehumanizing another person they can have some type of orgasmic feelings.

A. Yes sir, that is correct.

Q. Doctor, isn't it possible that this is basically or could have happened in this circumstance?

A. I would rather you give me a hypothet. It is possible. I think it is possible.

Q. Doctor, anything is possible.

A. Yes.

MR. BOUDOUSQUE:

I have no further questions.

MR. WEIDNER:

Q. Doctor, the District Attorney talked to you about sociopathic personality. A person who has a sociopathic personality, are they able to form intent to do their acts in the normal way that a normal average person would form and intent?

MR. BOUDOUSQUE:

I object to that. What a normal person would form intent and the way a sociopathic forms intent, actively desires [834] the prescribed consequences, that is intent. I can't see how you can have one person having one criteria in intent and another individual having another.

THE COURT:

Did you finish?

MR. WEIDNER:

Q. Doctor, a person who has a sociopathic personality are they able to form intent or active desires to have things happen like the average person in the courtroom would be able to form it who was not a sociopathic personality.

MR. BOUDOUSQUE:

My only objection is he able to form intent, that is the issue, not whether he is able to form intent like a normal person. Normal people I don't think would have the intent. What I'm trying to say, Your Honor, that intent is the same and you should not delineate between someone that has a basic personality, that is different from another individual.

THE COURT:

Would you care to comment on those remarks.

THE WITNESS:

Well as I understand it you are asking me can a sociopathic personality form an [835] intent as a normal person would form an intent, is that correct?

MR. WEIDNER:

Q. That's right.

A. First of all yes they can form an intent. A normal person can form an intent to do something as well as a sociopathic personality could form an intent to do something but what we see in sociopathic individuals would



form different types of intent than that of a normal person. The things they do are different than what a normal person would do. If I explained myself correctly.

Q. In other words they can on some level they will intend what they are doing but it may be a different level.

A. No it has nothing to do with the levels. It depends on the type when you talk about intent, you are talking about behavior. That's what you are talking about in terms of intent. Normal individuals, their goals are different from what a sociopathic individual's goals may be. His goals is perhaps to rob a bank and get away with it whereas a normal person would want to become a car salesman. Did I make that question clear?

Q. If a person is a sociopathic personality, does [836] he understand what he is doing?

A. Yes sir.

MR. WEIDNER:

I have no further questions.

MR. BOUDOUSQUE:

Thank you, Doctor. We will introduce this joint motion as State and Defense-4.

MR. WEIDNER:

I call Glenda White.

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[870] DR. GENEVIEVE A. ARNESON, 1011 Fourth Street, Gretna, Louisiana, was called as a witness by Counsel for the Defense and after first being duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

MR. WEIDNER:

Q. Doctor Arneson, what is your occupation?

A. I am a medical doctor, specializing in psychiatry.

Q. How long have you been doing that?

A. Twenty-two years.

MR. BOUDOUSQUE:

I will stipulate as to her qualifications as an expert in the field of psychiatry.

DIRECT EXAMINATION

MR. WEIDNER:

I will accept that stipulation.

MR. WEIDNER:

Q. Now Doctor, in connection with your acting as a psychiatrist, do you do much work with Jefferson Parish court system?

A. Yes.

Q. In what connection do you do that work?



A. Well I frequently am appointed by the Court for examining prisoners relative to sanity hearings or sometimes the Court just wants a psychiatric evaluation. I am also assistant coroner of Jefferson Parish and do a lot of work in terms of civil commitments of mental patients.

Q. Doctor, how many people, can you give me a rough figure of [871] how many people you think you have examined that are charged with criminal offenses?

A. I'd say over a thousand.

Q. And how many years have you been doing this?

A. Since 1965.

Q. Doctor, in connection with your various jobs and in connection with Jefferson Parish, have you examined one Robert Sawyer?

A. Yes.

Q. I show you a medical report that is dated June 9, 1980. Would you read that?

A. (The witness complies).

Q. Is that a report you wrote on Robert Sawyer?

A. Yes.

Q. Was this medical report derived from a clinical evaluation conducted of Robert Sawyer?

A. Yes.

Q. Could you tell me what your psychiatric impression of Mr. Robert Sawyer was at the time you made the examination.

A. This examination was done June 2nd, 1980 and my psychiatric impression following the exam, there was no evidence of psychosis. No gross abnormalities in the mental status at this time. Probable sociopathic personality. In my opinion the subject would be considered legally sane and mentally competent to stand trial at this time. From the subject's description he was intoxicated on wine at the time of the alleged offense and therefore it is probable [872] that he has a toxic amnesia for the details of the alleged offense. In the body of the motion to appoint a sanity commission it is mentioned that a brain scan test should be included which would enable medical experts to determine lack of mental capacity or the extent of mental capacity for the following grounds. It should be noted that this type of test would not give the information that is desired.

Q. Doctor, also in connection at the time you made this first psychiatric examination of Robert Sawyer, did you have in your possession when you made this examination any police reports, documentation or any other information in connection with the crime of which he was charged?

A. No.

Q. Since you have made this examination have you had an opportunity to review all the other documentation?

A. Yes.

Q. Have you been able to review in depth.

A. Fairly well.



Q. So you have a fairly good working knowledge of what happened in this particular incident?

A. Yes.

Q. Doctor, I would like to put a hypothet to you. This is taken from testimony which has been given in the Court today.

MR. BOUDOUSQUE:

I object to that statement. A hypothet by its very nature is not taken from the testimony. It is a [873] hypothet and nothing more than that I think the testimony what was testified to the jury heard that and they should know I don't think his hypothet arises from the testimony.

THE COURT:

Ask the question.

MR. WEIDNER:

Q. Doctor, approximately eight o'clock one evening Mr. Sawyer and Cynthia Shano go out to various bars or they leave and go out to bars and they begin drinking.

MR. BOUDOUSQUE:

I would ask that the hypothet if it's going to be a hypothetical by its very nature does not come from a fact finding situation. A hypothet is a hypothetical situation, it doesn't exist to say. It is a hypothet and described the exact same terms or what is supposed to be the testimony is inconsistent.

THE COURT:

Ask the question.

MR. WEIDNER:

Q. They leave approximately 8:00 p.m. They go to various bars, they begin drinking wine, wine is drank, whiskey, beer. I believe it is MD 20/20 wine. Mr. Sawyer at least drinks continually all night, arrives at home approximately 7:00 or 7:30 a.m. At that time he is described as staggering, bearly able to walk, knocked down, continues drinking MD 20/20 wine and then I believe from your review of the reports and all you are aware of the incidents which occurred [874] during the next, sometime during the next four hour period.

A. I read what witnesses reported.

Q. Incorporating that into it approximately 1:00 to 1:30 p.m. in the afternoon he is described by a witness as being glassy-eyed and appeared to be in a stupor. From those facts your prior examination of Mr. Sawyer and those facts given are you able to render an opinion on Mr. Sawyer's mental condition during this period of time?

A. Yes.

Q. Would you give us that opinion?

A. Well it is my opinion if Mr. Sawyer drank that much alcohol and his behavior towards the victim is a described by witnesses –

Q. Speak up.

A. Mr. Sawyer had drank that much alcohol and his behavior toward the victim is as described by witnesses,



if his behavior is that described by a police officer who came to the house after they were called and he was simply sitting there, with his feet up near the head of the victim, then it would be my opinion that he was, he was psychotic and it was a toxic psychosis secondary to the alcohol.

Q. Doctor, when a person is in a toxic psychosis are they able to form intent?

A. No, not in the usual sense.

Q. Doctor, I'm sorry, can a person be suffering from a toxic psychosis at one point, this earlier point in time [875] we are talking about and then be able to respond to a command, told, you know, what happened, point and shake his head.

A. You mean when a person is in a toxic psychosis will they respond to a command. Yes they can be or they can't. I wouldn't be able to predict that.

Q. Would they be able to recall the events that occurred during the psychosis?

A. Most of them report amnesia for that period. Some have patches of memory like in a dream, nightmare.

Q. I show you a document that has been submitted in evidence and tell me if you had a chance to review it before. It's Robert Sawyer's statement given to police officers for Gretna at 4:01 p.m.

A. Yes.

Q. On the 20th of September. Have you had a chance to review that?

A. Yes.

Q. Would a man be able to give a statement and do something like that, would that be consistent with toxic psychosis.

A. You mean at the time he is answering these questions.

Q. No I mean if he had suffered that in the morning during the time the incidents were occurring.

A. Yeah but after he sobers up and detoxifies the brain, yes he is no longer toxic. He has been detoxified.

Q. He would be able to give a statement such as that?

A. Yes.

Q. Would the incident he described in the statement be [976] consistent with the psychosis.

A. I don't really know, know exactly what you are driving at there. His answers to the questions seems to be fairly straightforward and gives his version of what happened, his version of the events.

Q. Doctor, psychosis does it involve bizarre behavior?

A. Doesn't.

Q. Does it.

A. Yes, usually.

Q. Would the bizarre incidents that are described in this, would that be consistent with being in a psychosis at the time these incidents occurred?



A. Yes. The behavior is so monstrous and so inappropriate it seemed it would have a psychotic degree if this is true.

MR. WEIDNER:

Thank you Doctor. I have no further questions.

CROSS EXAMINATION

MR. BOUDOUSQUE:

Q. Doctor Arneson, when did you have the first occasion to examine the defendant?

A. June 2nd at the Parish Prison, 1980.

Q. How long was the extent of your interview?

A. I didn't time it. They are usually around thirty minutes.

Q. About thirty minutes.

A. Uh-huh.

Q. Did you have the occasion to discuss you findings with Doctor DeVillier. Did you have the occasion to discuss your findings of your report with Doctor [877] DeVillier?

A. Before the sanity hearing?

Q. Before your wrote your report?

A. No. He usually said I thought he was okay and I said yes I thought he was okay and that's what we are referring to his sanity and his mental compentency which is why I was examining him at that time.

Q. You didn't corroborate or correlate as to give any input as to see what your evaluations are, to see if they are correct at the time you examined him. You stated there was no evidence of psychosis, no gross abnormalities and mental status at this time –

A. Yes.

Q. And that he was probably a sociopathic personality. What is a sociopathic?

A. A sociopathic personality is an individual who has for whatever reason, we really don't know why they have difficulties incorporating a super ego consciousness and they are, they will do anything without any feeling of guilt or remorse, do whatever they think they can get away with. Many of them are involved in criminal activity if they are not of good intelligence. If they are of good intelligence they are frequently very successful in business or law.

Q. What would you consider good intelligence?

A. Well I would say intelligence above average. You want a number?

Q. No. I don't want a number. I want to go into something [878] else. It says you testified at a hearing in this Court on June the 12th, 1980. We asked what a sociopathic personality was and you said these individuals have great problems in terms of superego, by that I mean conducting themselves according to the rules of society. They are usually very impulsive to which they do what they feel like doing. They have low frustration tolerances, no guilt or feelings of guilt. If they do perform



some act that is in opposition to society, that type of thing, that would be an accurate statement?

A. Yes.

Q. What you are saying a sociopathic personality, an individual who has this type of personality, has no conscience as the normal individual might know it to be conscience.

A. Right.

Q. They do intend the results of their actions and they do frequently know what they are doing, do they not?

A. Yes.

Q. They do intend the results of their actions and they do frequently know what they are doing, do they not?

A. Yes.

Q. Most criminals who commit crimes, commit crimes with the intent to commit their criminal intent?

A. Sociopathic personalities might plan a very successful bank robbery.

Q. And there are some people that just act on instinct because something they are souped up at the time and they act regardless of how it may affect the lives of another individual, correct?

A. Well I wouldn't associate that necessarily with a [879] sociopathic personality. They are very usually well aware of what is right or wrong but they will not respect if they think they can get away with it.

Q. It doesn't matter what they do to another person or how their actions affect other people's lives. They are not concerned about the pain or suffering.

A. They have very little guilt, yes.

Q. But they do intend what they do if someone goes out and pulls a gun and if he feels like blowing another person's brains away so a person wouldn't be a witness against him that happens, you've examined people like this?

A. Yes.

Q. Would you consider these people suffering from an antisocial personality?

A. Uh-huh.

Q. They intend to cock the gun and pull the trigger.

A. If it's for their benefit, yes.

Q. Doctor, what is a sadist?

A. A sadist is a person who gets sexual pleasure or satisfaction from torturing or making other people suffer pain.

Q. A sadist feeds his ego, does he not, to degrade and to dehumanize another person, is that correct. He has a sense of superiority.

A. That's controversial. It is known that sometimes inflicting pain and torture on another person is somehow tied up with sexual satisfaction in these very warped individuals.

[880] Q. He knows what he is doing. Obviously anybody who commits that type of crime would not be



what we consider normal, may be considered warped, but they intend the results of their actions.

A. Certainly because it brings them gratification.

Q. Sure. Now when you say that the defendant was suffering from toxic psychosis. I'm sorry, toxic amnesia, you are saying maybe he didn't remember all the things that took place because of the amount of alcohol he drank?

A. Yes. Many times substances will impair the brain so that events are simply not recorded.

Q. When did you have the first occasion to review the statement of Robert Sawyer?

A. I think it was this afternoon.

Q. Just this afternoon? Is it not a fact, Doctor, that you had already reached a conclusion from previous conversations with Mr. Weidner before you evaluated that report, more than likely the defendant suffered from toxic psychosis?

A. Yes.

MR. WEIDNER:

I object to the implication. He is trying to imply we got together and decided what her opinion was.

THE COURT:

The Court overrules that. That wasn't the question. The question was had she arrived at that conclusion prior to reading that report.

[881] MR. WEIDNER:

My objection is to the implication.

MR. BOUDOUSQUE:

The jury can decide.

THE COURT:

You can answer that question.

THE WITNESS:

I answered it.

MR. BOUDOUSQUE:

Q. You answered that you had already arrived at the opinion based on evidence given to you by Mr. Weidner that this man probably suffered from a toxic psychosis.

A. Yes because most of it was because most of it was because of reading some of the court reports by the police.

Q. You read the police reports?

A. Yes.

Q. Did anything in that police report indicate in detail the actions of the defendant during the time he was allegedly suffering from toxic psychosis?

A. The thing that struck me was the fact he was just sitting there not making any effort to escape or make any kind of apparent escape, unaware of his situation.

Q. Doctor, that's true. You are of the opinion he made no effort to escape and he did not move, correct?



A. This is what the policemen said, he was simply sitting there in the room.

Q. If I were to tell you prior to that policeman coming, that a man by the name of Thomas Champagne in so many uncertain terms told the defendant, Tommy [882] Champagne, he had a long chain in his hand and a chain wrapped around his hand and in no uncertain terms he told the defendant if you get out and you come out I'm going to give you exactly what you gave to Frances. Would that change your opinion as to why he did not move?

A. It might but not necessarily.

Q. What do you mean by not necessarily Doctor. Why wouldn't it change. I get the impression that part of your diagnosis is that he didn't move because he was in such a stupor he couldn't move but if I were to tell you he responded to all the commands, the facts indicated that he was understanding of the events around him, he was told in so many uncertain terms he'd better not leave until the police come, that wouldn't change your opinion.

A. Well I would like to have more of a description of what he was looking at.

Q. Doctor, is it not a fact no matter what I tell you at this point in time it wouldn't change your opinion because you have already been committed to that opinion?

A. No I'm not committed to an opinion. I am simply giving my medical opinion. I have no position in this at all.

Q. Did you have the occasion to review any one of these numerous letters that were written by the defendant that would give you any type of indication relating to what his actions were?

A. No I didn't see any of those letters.

Q. Don't you think you would have liked to see those letters [883] before you made an evaluation?

A I don't think so.

Q When is the first time that you really sat down in detail with Mr. Weidner and started discussing this case?

A Well we have been sort of, you know, in the hall because I have overheard a good bit.

Q Well often, have we discussed this case, the only time I can recall.

A You've called me on the phone a couple of times. I returned your calls but I never could find you in. Mr. Weidner and I discussed it last Friday.

Q Where did you discuss it at, Doctor?

A Over at the mental health center.

Q That is where you had lunch with Mr. Weidner?

A We had lunch and after he brought me some of the materials to read.

Q You didn't discuss any of the topics of what your testimony would be at your luncheon?

A Yes.



Q So that is when you began talking about it at lunch. Has Mr. Weidner ever represented you in the past for any civil actions?

MR. WEIDNER:

I object to that.

MR. BOUDOUSQUE:

It would show an obvious interest and possibly bias.

THE COURT:

[884] The Court overrules that. You can answer that.

THE WITNESS:

Yes.

MR. BOUDOUSQUE:

Q On how many occasions have you used the legal services of Mr. Weidner?

A One time and he is also, a while back, attempted to collect fees for me.

Q Would you consider him a friend?

A Well yes.

Q Now Doctor, is it not a fact that basically what you are trying to do is give an educated guess about something there is no way for sure you could know what happened?

A Yes. There is no way I could know for sure because I was not there.

Q And a lot of your opinion is based on the hypothet that was given to you by Mr. Weidner. Basically you

drew your conclusion from the facts given to you by Mr. Weidner. He is the one that gave it to you.

A Right. Some of the things I read as I said before this in the police report.

Q But basically your source of information as it relates to this case was provided to you by the defense attorney?

A His hypothetical question.

Q But he was the one that was supplying you with most of the information, was he not?

A Well this is hypothetical.

Q Doctor, I wish you would quit being evasive. Was most of [885] the information you got related to this case given to you by the defense lawyer?

A Yes.

Q And is it not that people can slant things in different fashions, can they not?

A Certainly.

Q I am not accusing Mr. Weidner slanting anything obviously. Obviously he is very competent and a friend of mine. If I was advocating a position to you I would be advocating it differently than a defense lawyer.

A Right.

Q What information besides what Mr. Weidner has given you did you have at your grasp when you made this decision?



A I had a copy of the police report. I had some information regarding description of what went on from witnesses.

Q Did you ever read the statement of one Cynthia Shano?

A No.

Q Did you ever read a statement by a Charles Lane?

A I believe I did.

Q You read that statement?

A Yes.

Q But you didn't read the statement of Robert Sawyer?

A Yes. Is that what you were showing me.

Q Prior to you making up your mind, I'm not talking about now, you made up your mind weeks ago, at least last week. You didn't read Robert Sawyer's statement before you made up your mind?

A Well it wasn't necessary.

Q You don't think that what a man says that he did

[886] A Four hours later.

Q This is two hours after it happened and two hours is a whole lot better than ten months after the commission of an offense, don't you think Doctor?

A (The witness did not respond.)

Q Answer me if you would Doctor.

A Would you repeat the question.

Q My question is don't you think a statement of a man as to what he was doing or what he said he was doing two hours after the commission of a crime –

MR. WEIDNER:

Objection. That is absolutely contrary to all the facts. The statement was given at four o'clock. The factual testimony is that that incident occurred either between 7:30 and 8:00 o'clock in the morning or sometime up until about 12:30 or 1:00 in the afternoon.

MR. BOUDOUSQUE:

Your Honor, that matters not.

MR. WEIDNER:

Your Honor, it matters to me and I am objecting.

THE COURT:

Rephrase the question.

MR. BOUDOUSQUE:

Q It doesn't matter because whether it was given two hours after the incident, Doctor, or after four hours after the incident, something that a man said he did and what he can recall as to certain factual events that he said that he did, don't you think that [887] would be very important information that you would want to consider.

A Well when I read that this afternoon it was apparent to me the man had sobered up or had been detoxified.



Q Do you remember talking to me in the attorney-client room right before your testimony.

A Yes.

Q Do you recall if I asked you if you had read the statement of Robert Sawyer?

A Yes.

Q And did you not indicate to me at that time that you had not read the statement of Robert Sawyer?

A I may have looked it over but I didn't read it.

Q Doctor, answer my question. Did you not tell me you didn't read this statement about twenty minutes before Doctor DeVillier took the stand?

A That is when I read it.

Q After Doctor DeVillier got off the stand.

A . No, when we were in the attorney-client room and you showed it to me.

Q I never showed you this statement.

A Where did it come from. I don't remember. I did see it.

Q But did you read it.

A I thought you showed it to me. I didn't have time to read it at all but I am looking at it right now. As I said it looks like a fairly straightforward description by the defendant of his version of what happened.

Q Now Doctor, one of the things he says, me and Cindy started [888] drinking about 9:30 p.m. I had one

draft beer, about five slugs of a bottle of wine, a shot of Jack Daniels and about ten beers. Can you tell me was it the first draft beer, was it the five slugs he had from the bottle of wine or was it at the time he had the Jack Daniels in conjunction with the other dri[illegible] that he started to commit these toxic psychotic type of actions.

A I wouldn't know.

Q Well Doctor, you are stating an opinion that he had to at one point in time.

A There is a great difference. Some people have a great tolerance for alcohol. Some people have a little tolerance for alcohol.

Q Did you ever question Robert Sawyer as to his tolerance to consume alcohol?

A No.

Q Don't you think an important factor in your decision as to whether or not he is suffering from some type of toxic psychosis is how alcohol acted medically and mentally to this man?

A Yeah I did. He told me at the time of the examination, at the time of the alleged offense he was inebriated, drunk with a cheap wine called Mad Dog 20/20 and he states that will make you crazy.

Q So that will make him crazy, right Doctor. That's what he told you.

A Yes.

Q Doctor, when an individual has toxic psychosis, is [889] hallucinations or delusions part of that?



A Frequently they have visual hallucinations or mental distortion.

Q Frequently?

A Yes.

Q What you read from the time you first interviewed the defendant, did he give you any evidence he was suffering from any type of delusions or hallucinations?

A He probably wouldn't recall that. You see, if people have distortions of faces or undergo changes and some people get very frightened and will strike out at an individual in a very inappropriate and psychotic manner.

Q Doctor, isn't it possible that an individual with an antisocial personality, an individual that has no conscience as far as he is concerned, it doesn't matter as long as it gratifies him. It's possible for these people to have intent, is it not?

A Well in the first place I don't know if Robert Sawyer is a sociopathic personality.

Q Please answer my question.

A Of a sociopathic nature.

Q You are saying now you don't know.

A I never said he was. I said probable.

Q Probable is more likely than not.

A That's what the word means.

Q That's what we are getting into. You are of the opinion he probably has this type of personality.

A Yes but I would have to have lots more information about [890] his early upbringing and his interpersonal relationship to make that diagnosis definitely.

Q A person who is psychotic, Doctor, they have intensity, like we talked about, the man who was going to commit the murder. He knows what he wants to do, right?

A If they are psychotic. They may have intent but it may be based on delusions or hallucinations.

Q Doctor, did you not say in my hypothetical example if somebody was going out and robbing someone and kill them just because they didn't want them to testify that person probably had an antisocial personality and he was doing that for his own ends and he had no conscience and he knew what he was doing.

A Right. It was for his benefit.

Q So if a person did drink at the same time, okay, that he went out and committed those acts, his basic personality was such that he intended the prescribed criminal consequences and the alcohol didn't have anything to do with it.

A No I don't believe that.

Q You don't believe that.

A I don't believe that somebody is that toxic to the point of psychosis with alcohol can form intent in terms that you are talking about and say ah-hah, I'm going to do this.

Q Let's say Doctor, he is not suffering from toxic psychosis. You are saying possibly he is suffering from



toxic psychosis from the information supplied to you by Mr. [891] Weidner on a limited situation. You stated in your report the man is probably of an antisocial personality.

A Probably.

Q If he was suffering from an antisocial personality, alcohol would do nothing but peak his emotion, is that a possibility, to magnify, to intensify the feeling he already has as a part of his personality?

A He can do that.

Q It can.

A Common sense, the emotional state, the person is in, yes, but not to the point of psychosis.

Q Doctor, you only have arrived at the decision he was suffering from psychosis based on a limited hypothetical situation given to you by Mr. Weidner putting aside that limited hypothet.

A I thought there were witnesses that saw him extremely intoxicated.

Q Doctor, there are witnesses that have a lot of conflicting statements. If I were to tell you four policemen who are certified in conducting field sobriety tests –

MR. WEIDNER:

I object to that. People are certified.

THE COURT:

Put it in the form of a hypothet.

MR. BOUDOUSQUE:

Q Hypothetically, Doctor, if I were to tell you there were four policemen or three policemen who observed the [892] defendant from the time, right after this heinous act had occurred and they were of the opinion based on their many years of experience, based on seeing inebriated people, drunk people, that he didn't talk in a stupor, didn't walk in a staggering state, he was coherent, that he understood exactly everything that was said, that he appeared to have been drinking but he was not intoxicated to where he was not boxed out of his mind, that he showed signs of coordination. That he understood everything that was being asked, that he had a normal speech pattern, all the things that these people are trained to look for, if I were to tell you in their opinion he wasn't intoxicated, would that change yours?

A Well certainly if these were reputable observers. If he had a blood alcohol level and he had one of these breathing intoximeters or such as that –

MR. BOUDOUSQUE:

I have no further questions.

REDIRECT EXAMINATION

MR. WEIDNER:

Q Doctor, during the course of our discussions about your opinion, medical opinion on Mr. Sawyer, have I ever attempted to influence your opinion?

A No.



MR. BOUDOUSQUE:

Your Honor, I have never intimated that. At no time did I ever intimate that Mr. Weidner has [893] distorted the facts or tried to influence this doctor's opinion. My only statement was that people advocate things in different ways.

MR. WEIDNER:

Q Doctor, you said the first time you saw Mr. Sawyer's statement was sometime this afternoon?

A (The witness nods affirmatively.)

Q You had a chance at that time to read it?

A I just glanced over it. I didn't read it all in great detail.

Q Prior to that you had plenty of information about Mr. Sawyer and about the incident had occurred?

A Yes.

Q You formed an opinion?

A Yes.

Q When you finally had the chance to see the statement he had given to the police, and seen it and been able to go over it, has that changed your opinion?

A No.

MR. WEIDNER:

Thank you doctor.

MR. WEIDNER:

Q Doctor, the same policemen Mr. Boudousque was talking about that says Mr. Sawyer was not intoxicated, if I told you those same policemen on an arrest register which has the defendant as being moderately intoxicated, all of them deny putting that on the arrest register although it is there and also that even though there is information that the police was [894] told Mr. Sawyer had been drinking heavily, when this incident occurred, that has been denied also –

MR. BOUDOUSQUE:

Objection. He is arguing.

THE COURT:

Is this a question.

MR. WEIDNER:

This is going to be a question.

MR. WEIDNER:

Q Knowing that these policemen who Mr. Boudousque said, would that change your opinion that they are four credible people who told you Mr. Sawyer was sober, knowing these same four credible people have all denied the moderate intoxicated on the arrest report and all denied the press reports of the defendant having drank heavily, would that change your opinion.

A It would make me wonder about them, yes.



MR. WEIDNER:

I have no further questions. Your Honor, the defense rest.

MR. BOUDOUSQUE:

I have no rebuttal.

(Recess for the day at 8:15 p.m.)

[941] PETER THOMAS, Little Rock, Arkansas, was called as a witness by Counsel for the State and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. BOUDOUSQUE:

Q Mr. Thomas, what is your occupation?

A Deputy Prosecuting Attorney for the Sixth District of Little Rock Arkansas.

Q What city?

A Little Rock, Arkansas.

Q How long have you been so employed?

A Approximately a year and ten months.

Q I'm going to ask that you look at State Penalty 1. Can you identify that document and if so how?

A Yes. State's Penalty 1 consists of four pages. The first page would be a certificate of authentication according to the Acts of Congress dealing with the last three pages. The second page is a felony information file by the prosecutor of the Sixth Judicial District in Little Rock charging Robert W. Sawyer with murder in the second degree. The third page is a judgment concerning that case and the fourth page is a commitment to the Department of Corrections of Arkansas.

Q Now-I am going to show you State's exhibit 2. Can you identify this document and if so how?

A State's Exhibit 2 is what we refer to as a Pen Packet. This is what the prosecutors in Arkansas request



from the State Penitentiary dealing with commitments [942] to the Arkansas State Penitentiary.

Q These documents, how were they procured?

A Well State's Exhibit 1 was procured by myself at your request. I went to the Circuit Clerk in the Sixth Judicial District and requested certified copies of the information, judgment, and commitment to the Arkansas State Department of Corrections.

Q State Penalty 2.

A State Penalty 2 was requested by me from the Arkansas Department of Corrections and sent to me here today.

Q Would you read that felony information. What is the bill of information?

A Well in the Sixth Judicial District generally people are charged on a prosecutorial information. I as the prosecuting attorney, as the moving force, this was not based on a Grand Jury Indictment –

Q Do you use the Grand Jury much in Arkansas?

A Very seldom.

Q Would you read that felony information.

A State of Arkansas versus Robert W. Sawyer. It was filed January 2, 1974. Felony information. Lee A. Munson, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas charges Robert W. Sawyer with the crime of violating Arkansas Statutes A and N. 41-2206, murder in second degree, committed as follows,

to wit: The said defendant, in Pulaski County, Arkansas, on or about the 4th day of December, 1973, did unlawfully, feloniously, willfully and [943] with malice aforethoughts, assault, kill and murder Laura Durham by then and there striking her with his hand, with an unlawful and felonious intent then there, her, Laura Durham, willfully and maliciously to kill and murder, against the peace and dignity of the State of Arkansas.

Q I ask you to look at State Exhibit 2. How old was Laura Durham?

A State's Exhibit 2.

MR. WEIDNER:

Objection Your Honor.

THE COURT:

Is this in one of the documents?

MR. BOUDOUSQUE:

Q Will you look through State's Exhibit 2.

A Yes.

Q Is there any indication in that document as to the age of Laura Durham?

MR. WEIDNER:

Objection. They have not been properly identified.

MR. BOUDOUSQUE:

Q What is State Exhibit 2?

A State Exhibit 2 is what we went over before being the Pen Pack from Arkansas.



Q Where was that obtained from?

A It was obtained at my request from the Arkansas Department of Corrections.

Q And where was that sent?

[944] A It was sent to me at your office, it arrived today.

MR. BOUDOUSQUE:

Your Honor, at this time I would like to offer, file, and introduce into evidence Exhibit State 2.

MR. WEIDNER:

May I ask some questions in connection with this.

MR. WEIDNER:

Q Mr. Thomas, did you participate in any manner in preparing that?

A No sir. This would have been prepared by the Arkansas Department of Corrections.

Q Have you ever seen it before?

A This particular Pen Pack, not before this morning, no sir.

Q Do you have any knowledge of that Pen Pack other than you requesting it.

A Well other than I assumed it existed.

MR. WEIDNER:

That's all the questions I have.

MR. BOUDOUSQUE:

Q Is that prison packet certified according to all certifications of prison packets that are obtained by the District Attorney in Arkansas?

A That's correct. It is certified. These are accurate records of the Arkansas Department of Corrections by the Warden.

Q Is this basically how all prison packets look to the State of Arkansas?

A Basically.

[945] MR. BOUDOUSQUE:

I would like to offer, file, and introduce into evidence –

MR. WEIDNER:

Is it certified according to the Acts of Congress?

THE WITNESS:

No.

MR. BOUDOUSQUE:

The Acts of Congress have to do with Court records and not with prison packets?

THE COURT:

How are they given?

THE WITNESS:

This is a certificate of certification on the top. I, Robert J. Tansy, hereby certify that I am the Warden of the Arkansas Department of Corrections, a penal institution



of the State of Arkansas, situated in the County and State aforesaid, that in legal custody as such officer, are the legal records of persons heretofore to said penal institution, that the photograph, summary, Department of Corrections commitment, release noted attached hereto are copies of the original records of Robert W. Sawyer, A.D.C. Number 65250 a person heretofore committed to the said penal institution, and who served a term of imprisonment therein; that I have compared the foregoing and attached copies of the respective originals now on file in my office and each thereof [946] contained in its full, true, and correct transcript and copies from its originals.

In witness whereof, I have here unto set my hand this 18th day of September, A.D. 1980. Signed R. J. Tansy, Assistant Warden.

MR. WEIDNER:

I object to their introduction.

THE COURT:

The Court is going to overrule the objection.

MR. BOUDOUSQUE:

Q I ask that you look at State Exhibit 2. Would you look through that document please sir. Does anywhere in that document does it indicate the age of the victim of the homicide that Mr. Sawyer had committed?

A Yes sir. There is an indication.

Q And how old was Laura Durham?

A Four years old.

Q Is there any indication from State's Exhibit 1 or State's Exhibit 2 the ultimate conviction of Robert Sawyer, what he was convicted for?

A Yes. That would be contained in the third page of State's Exhibit 1 that is filed as a judgment from Pulaski Circuit Court.

Q What was Robert Sawyer convicted of?

A Involuntary manslaughter.

Q Is there any indication in State's Exhibit 1 or State's Exhibit 2 as to what time he was sentenced to serve?

A He was sentenced to three years to imprisonment at the State Penitentiary.

[947] Q Is there any indication as to how much time he actually served?

A State Exhibit 1.

Q State Exhibit 2?

A I believe there is. Yes in State's Exhibit Number 2 there is a sheet that is headed Status Assignment/Release date record. Inmate name, Robert W. Sawyer. These records indicate on March 22, 1974 he was received from Pulaski County Arkansas and on April the 3rd, 1975 he was paroled from the Arkansas Department of Corrections.

Q He served approximately how much time?

A About a year and ten days.



MR. BOUDOUSQUE:

Your Honor, at this time I would like to offer, file, and introduce State's Exhibit 1 and 2 and ask that they be displayed to the jury.

MR. WEIDNER:

Same objection.

THE COURT:

Same ruling. Do you have any other question.

MR. BOUDOUSQUE:

No Your Honor.

MR. WEIDNER:

No questions.

MR. BOUDOUSQUE:

The State has no further witnesses.

MR. WEIDNER:

The defense would call Glenda White.

[948] GLENDA WHITE, 934 Montclair Road, Pensacola, Florida, was called as a witness by Counsel for the Defendant and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. WEIDNER:

Q Mrs. White, in your previous testimony you told us Robert Sawyer is your brother.

A Yes.

Q Would you at this time tell us what you know of Robert's life growing up and what you know of your brother.

A Well my brother has had a pretty rough life. I guess I have to start back when he was, even before he was born, because I think that played an important part with him. My mother was a very tiny woman and when she was pregnant with Robert and his twin sister she had a very, very difficult pregnancy. She was kept in bed off her feet and almost the whole nine months was pretty hard on her. She was very sick. She had no idea that she was going to have twins at all and when they were born she just never did get over it. She was sick for so long and then the shock of having twins and everything else and when they were four months old my mother shot herself. She killed herself and my daddy never got over it. He hasn't to this day. He never got over it. I don't think he deliberately, knowingly blamed Robert for my mother's death but I think subconsciously he did, therefore, I think he has grown up like he was [949] feeling responsible for it. I was only four years old when it happened and like I said they were four months old and my grandmother, which is my dad's parents was the only one to take care of us and my dad wasn't able to. He just almost went crazy and my grandmother had a nervous breakdown so my dad's sister volunteered to take the little girl an take care of her just until my grandmother, where she could take care of her again and of course, you don't get over a nervous breakdown right away and they had me and Robert to take care of every time when she got to the point she felt like maybe she couldn't handle all three of



us, they went over to my aunt to get my sister every time they would have to go, of course, my aunt would cry and say let me keep her a little while longer. I've gotten attached to her, you know, and you need the extra time to get your own strength back and a whole line of stories. Nonetheless she was left there. She ended up staying there the whole time so that had them separated and of course me separated from her too and that's always bothered both of us, you know. We always wanted our sister with us and we got to visit her, they would come over to visit and they came over there but it's not the same, therefore, he ended up blaming himself for being separated from her as well as my mother's death and so far, my dad, I just don't know. He just seemed to go crazy. He hunted for two years looking for some kind of note from my mother [950] leaving some kind of explanation as to why she had done this but there wasn't anything but, therefore, like I said my sister was gone and it was obvious I wasn't the one that caused it, but to him, Robert was the only one that was left and he took it out on him without meaning to and by that I mean we lived on a farm and Robert was never allowed to do things that everybody else was. We had to work in the fields, you know, hard work. Hard work doesn't hurt anybody but when it's carried to the extreme then I think it goes too far but my granddad was there more of a stability, you know, for a while and then of course we lost him but in the meantime I had left home. I had gotten married so I wasn't there. It was just him left there and my daddy worships his dad and when he was gone he just totally acted like he didn't care for anything or anybody since then and Robert took the rap of it all. He wanted to play

ball and do things like other kids was allowed to do and he wasn't allowed to. We lived about eight miles from town and my dad said Robert asked him if he could play ball and he told him no. No. You've got to work, you've got work to do. You've got work to do and so he ended up like that. My granddaddy had given Robert a real nice calf and a cow, and you know, on the market that is worth good money so my dad told Robert, he said if you will give me your cow and calf I will let you play ball so he wanted to play ball so bad he gave him the cow and calf. [951] This is one example. One instance. So after he gave the cow and calf when time came for his ball games he didn't get a ride out there. In fact he had to work in the field almost until time for the ball game to start and he left and he walked. He was a very little boy. He walked eight miles to get to play ball. When he got back home he got a whipping. When I say whipping, I'm not talking about a spanking like you give a child. My daddy whipped and when he whipped he whipped with whatever was handy. I know. I got a few before I left. I love my daddy and I understand more about it now because I am a lot older. I've had time to be away from there for years and years but at the time I didn't feel like he loved me. I didn't feel like he loved Robert. I felt like he took everything out on us but like I said I was gone and he had to work in the field. He wasn't allowed to play ball. He wasn't allowed to go swimming. He wasn't allowed to go to the movies and do everything that other kids have done. He was isolated out there. There was a little boy that lived up the road that was just about his age and he has come down to our house and my daddy would sit right in front of Robert and he would say the other kid's



name was Gary, he said come on Gary, let's go to the store, you know, or come on Gary, let's go to Memphis with me and get feed, you know, and he would tell Robert, you stay here and keep the cows from getting out in the road. There was a pasture with a fence with a pond in [952] it that they could graze in but no, they had to stay out in the open yard there and he had to stay out in the hot sun to make sure they didn't get in the road. He told Gary, come on Gary let's go to the movies, carried that other kid to the movie and left him standing there to watch the cows and he'd come up with work to do, I'm talking about senseless things, get out there, cut a ditchbank with high grass but it's not bothering anybody. Why did he have to do that, just because by God I said so, just because I said so, give you something to do, keep you out of mischief. So after a while Robert began to take off too, you know, he would like I said, I was gone so he began to run off and everytime he would get brought back he would take off again. He would get brought back and get the devil beat out of him, but he would take off again and he ended up, I don't remember the exact age it was, like fourteen or fifteen because of his running away and this kind of stuck my daddy ended up signing a paper and whether he really knew what it was or not, I don't know, but it ended up they put Robert in the State Mental Hospital for no reason and they gave him drugs. Well, I don't know what they were. I know they kept him where you just sat around and didn't give anybody any trouble. You didn't have any energy to get up and walk around. When he resisted taking those drugs they gave him shock treatments as punishment and he stayed there until he got out to get away and took off from there and

he [953] when to Chicago and he was there on his own for several months and he left from there and he went to my aunt's in Texas and he was there for a while but he ended up coming back home. He wanted to be at home with us and Middleton is where we come from. It is a small town and the police there are not exactly the nicest people you want to know. If you get a little of a reputation everybody knows everybody. If you get a little reputation of running off or coming after you or because there is something they don't like – Robert has been in my house and he has been there the entire day and I know he has been there and I saw him and they would come and knock on the door, come in and slam him up against the wall and start searching him in front of my kids and my kids are there crying and screaming, why are you doing that, and he would say wait until we get outside. Don't do that in front of the kids. Me telling them all the time he hasn't done anything, why are you taking him in. He hasn't been out of the house and they said well we will decide that after we get up there and they wouldn't convict him of anything. It was a constant harassment every time he came around. He couldn't walk in the street. He would be picked up. If he stayed at the house he would be picked up because he was staying at my house and if he wanted, if he tried getting jobs and they would end up causing him to lose his job because when you don't show up you get fired and seventy-two [954] hours is the longest they can keep a person in jail on the suspicion of something, whatever the amount of time, that's what they would keep him. They would turn him loose and well it would end up being just enough time to cause him to lose his job. Maybe that sounds unfair to you but that happened.



So he left. He said there is no way I can make a life around here. He said, you know, I can't even hold down a job because they are constantly harassing me and these are things I've seen carried out with my own eyes. I would tell them again he hasn't done anything, he's not left the house so anyway he said if he went to St. Louis, said maybe if he got somewhere in a different town in a different state away from anybody that didn't know anything about him he could, you know, start life over and meet this girl. He met this girl there and they got married and Robert has a little boy that is ten years old and his wife was real young and I don't know for whatever reason when the baby was seven months old, well let me back track a little bit. When the baby, they were at my dad's when the baby was born and he wasn't very old and they went back to St. Louis because her family lived here and she wanted to go back so they went there and we all worried because we had saw the evidence that Rose wasn't exactly the proper mother to be taking care of a little baby. We were worried about the baby. He would be worried that he would be taken [955] care of and have enough to eat and everything so they came back and the baby was three or four months old or five months old. Yeah, about five months old and when they got back he was just as fat and clean and healthy as he could be. He had been taken care of extremely well and he stayed there with us and it didn't take very long to realize Robert was the one that had taken care of that baby. She didn't make any effort to take care of it at all. She didn't do anything for it. She didn't give it a bath. He's the one that took care of it and when he was seven months old she left and she hasn't been back. She hasn't laid eyes on

the child since. He couldn't take care of it by himself and in order for the baby to have proper care he left it with my grandmother there and again the same thing, he would try to get a job and work and well the police would arrest him to the point he couldn't keep a job so he left again and he ends up having the car wreck. He was in a car wreck and his eye was put out. He was really sick for a while there. Again he was back home and he tried to recouperate and there was just no making it there so, yeah, he has drifted around and been shoved around and gone from job to job and not been very stable but it has not been because he has not tried to make it in Middleton. He wasn't given half a chance unless you are from a real small country town you just don't understand. The police can be very prejudice and it's always bothered him [956] that he didn't have a home and his wife and child together. It's always bothered him and like I said he has always lived – in fact he talked to me about it. He said well I just, I guess I am the reason that dad is the way he is. You know, toward all of us. Since I caused mother to do what she did. He always felt to blame for that and anyhow I think he ended up feeling maybe in some way even though Rose left, maybe in some way he thought it was his fault. He didn't have his own child there with him. He was there, he came to see the baby and even this past summer he and Cindy and her two little boys and Cindy's mother and some man whoever was with them went to my grandmother's up there and he thought that he had a life with Cindy and her children and he wanted to see if he could get Scotty which is his little boy and take care of him and raise him and be a daddy to him the way he is supposed to be. Well he told Scotty to let's give



it a chance, you know, and see if you can like being with me and if not then I will take you back home and Scotty loves his daddy but at the same time all he has ever known is living around my grandmother and me and my dad and stepmother and so he went with him and he came here I think for a while and they went to Texas and Robert was working on the river and of course naturally Scotty would cry, you know, and he was homesick. He wanted to go back to my dad and then Robert felt like if he was given a little bit of time to get used to not being with them [957] maybe he would adjust to being with him. Maybe he could have a life with him so while he was on the river Cindy called my grandmother's and told her that Scotty wanted to come home, you know, so my stepmother went and got him and when I talked to him about slapping Frances, you know, he said that he thought maybe the reason he got scared so bad at her giving that child pills and trying to make her tell what she had biven [sic] him was because finally it sunk in on him he had lost his little boy. He could go visit him but as far as being able to raise him and do things with him it was over with Scotty, Scotty was too old. That was his home to him with my mother and my stepmother and my dad and grandmother. That's his home to him and he said it looked like these two little boys was the only kids he would have and that is why it panicked him so the thought of something happening to that little boy. Robert has never, you know, he has been portrayed here and I guess evidently to you you totally believe he is this cruel ruthless person. That is not true. My brother and I have had a lot of arguments. If you have got brothers and sisters you know you get mad and you have a lot of

arguments. We've had some pretty heavy ones and god knows he has never raised his hand to hit me. He has never threatened me and never abused me in any shape, form or fashion. I was divorced for a long time. I had two little boys. I've never been afraid to leave my kids with Robert to take care of them. Not ever. He [958] has took care of them when I was there, when I wasn't there. He has been there with them totally alone. There has never been no harm that come to them. He always took care of them. I never hesitated to leave them. My little boy, he would push him for hours in a stroller. I've never had any reason to even hesitate to let my children stay with him. Ever. They are big now but at the time, you know, I never had any reason to believe he would hurt one of them, not ever. He has always tried to help other people. It's like that he had it so rough that he tried to reach a hand out to help somebody find a job if he was working at some place and he thought there was half a chance maybe he could help them get on he was willing to help them. He brought them home to share what he had to eat. He has shared the last penny. He has had dogs, he's real partial to German Shepherds. He managed to get one or two along the line and I have seen him take the last penny he had and go buy food for that dog and not eat himself. He has come to my house with people that evidently needed a helping hand. They sure liked they did and he has maybe had a nice shirt. He has give them his good shirt to wear and he would wear the old ones. He has never given me any reason, there is no way I could believe he did the things and if he participated in that that he knew what he was doing. No way. I'm thirty-three years old and I have known him all of his life and I have been around him.



[959] There is no way, there has been a few times when he has been out and I haven't been around him. I've already told you that but he has lived with me, he has been around me and I've never seen what he has done, there is just no way. No way. He is just not a cruel person.

Q Mrs. White, what do you know about that conviction that occurred in Arkansas?

A About Laurie. That was a little girl that he and her mother's name was Gwen. They came to Middleton and stayed a while and they had been to my house, that little girl. I played with her. She would talk to me, you know, and she called Robert Wayne daddy. She hung all over him. It was very obvious. He wasn't mean to that little girl and when this thing with her happened we went to Little Rock and I talked to Gwen. In fact Gwen came to Middleton with Robert Wayne and my grandmother borrowed a hundred dollars to give them to help pay on the funeral and Gwen was with them and I talked to her and my grandmother talked to her and there was no reason for us to feel like he ever mistreated that child. The incident that happened Robert had been carrying that baby to where he had been working as a brick layer. He had been carrying the baby to work with him and she had been playing in the sand-piles, I don't know exactly how long Gwen told me, Gwen told me herself the child's mother told me herself Robert had been taking the baby to work because she was working somewhere else and [960] they didn't have a baby sitter or anybody to watch the kid so he carried her to work with him and she played in the sand while he was there and he saw to her and he was trying to give her breakfast, I believe it was breakfast. She kept playing in the chair slinging the food

and giggling and laughing at him and he was going to be late and he told her, Laurie sit up there and she wouldn't sit up and eat and he jerked the chair up there and he popped her on the shoulder and said sit up and eat.

MR. BOUDOUSQUE:

I have no objections to this testimony. It's all hearsay provided if I have a chance to have the same type of testimony with other hearsay evidence.

THE COURT:

You can ask whatever questions you want.

THE WITNESS:

I am telling you what the child's mother told me also. This is not something I am repeating. He told me this is something the child's mother told me and when we went over there I talked with her family and they said the same thing. They had no hard feelings against him. It was an accident, that the chair fell over and the baby hit its head. Yes, I realize you are saying that I wasn't there. I'm not claiming to be there. I simply told you to begin with this is what the child's mother and her family told me as well as Robert. They had no hard feelings with him after the child died. She came to my grandmother's with [961] him. My grandmother borrowed a hundred dollars and gave it to them to held pay for the funeral for the baby. I guess there has been no reason to think there was anything other than an accident.

MR. WEIDNER:

No further questions.



CROSS EXAMINATION

MR. BOUDOUSQUE:

Q If I were to tell you that I have in my custody the District Attorneys file from Arkansas relating to that conviction where Robert committed a homicide of a four year old girl and if I told you in this file I have statements of six people that Laura Durham, a four year old child, was an abused child, that constantly beaten by your brother, would you believe those six people?

A I have not seen the people. I saw the child with my brother on numerous occasions. I never saw him do anything whatever to abuse the child. Yes if she was acting up he corrected her just like her mother did. I never saw him mistreat the child. I don't know what somebody else said they saw. I know what I seen.

Q I will read to you a hospital report in reference to little Laurie. Four year old white female, Miss Laura Sawyer arrived at the emergency room on December 4, 1973 at 1:44 p.m. She was brought to the emergency room by Robert Sawyer. The emergency room recorded her address as such and such. The child was unconscious and her movements were decerebrate. The father stated [962] and it goes on to say the child was frail and appeared to be underweight, particularly noted the child had multiple scars on her body, two healed scars on her forehead, healed scars, not fresh scars. A scar the size in the right clavicle, a burn scar, a burn on the child's clavicle. She had a scar across her left instep. Upon questioning the father about the scars across the instep he stated it was because the child having dropped a glass on it but her feet had a big purple callus appearing abrasions. She had

multiple bruises, small bruises on her body. Does that indicate to you from what I have just read to you that this child was receiving the tender loving care that you have stated to this jury your brother gave that child.

A I am telling you I saw my brother give the child love and correction if she needed it. She was not ever beaten in front of me. He had not been with that child all of her life. I don't know what that woman or whoever he got connected with her did to the child. She was a little bitty girl. She was small boned, she was very tiny.

Q Do you recognize your brother's signature?

A Yes I recognize my brother's signature.

Q Do you recognize his initials. Is this his initials there, R.W.S.

A Yes, that's his initials.

MR. WEIDNER:

I have never seen this.

[963] MR. BOUDOUSQUE:

Q Is this his signature right here with his initials?

A That looks like his signature.

Q How often were you around Robert when he was living –

MR. WEIDNER:

I'm objecting to the use of this.



MR. BOUDOUSQUE:

She testified to nothing but hearsay testimony and it was all slanted one way.

THE COURT:

I'm going to sustain that objection.

MR. BOUDOUSQUE:

Q So as far as you are concerned Robert is the type of individual that is meek as a lamb and would never hurt anyone.

A I didn't say he was meek as a lamb sir. I said my brother was not a cruel person. He has never given me any reason to believe he is a cruel person.

Q Do you think this is cruel?

A Sure.

Q Do you think this is cruel?

A Sure.

Q Do you think this is cruel, what type of man could do something like that (indicating)?

A I don't know that my brother did that.

Q Do you know fingerprints were on that can?

A That was his can of lighter fluid?

MR. BOUDOUSQUE:

I have no further questions.

[964] MR. WEIDNER:

No questions.

[965-966] GLENN SMITH, 934 Montclair Road, Pensacola, Florida, was called as a witness by Counsel for the defendant and after first being duly sworn, was examined and testified as follows:

MR. WEIDNER:

Q Mr. Smith, do you know Robert Sawyer?

A Yes sir.

Q How do you know him?

A He is my uncle.

Q Would you relate to the jury please your experiences with Robert.

A He is just like my mother said, he has took care of me.

Q Was he ever cruel to you Mr. Smith?

A No sir.

Q Has he ever mistreated you?

A No sir.

Q Did he ever take you to do different things or engage in any activities with you.

A All the time.

Q What type of activities?

A He always took me to the park, to play baseball with me, football, took me to the movies.



Q Do you have anything else to say Mr. Smith?

A No.

Q Do you want your uncle to die Mr. Smith?

A No.

MR. WEIDNER:

I have no further questions.

MR. BOUDOUSQUE:

[967] I have none.

Mr. Weidner:

I call Robert Sawyer Your Honor.

[968] ROBERT WAYNE SAWYER was called as a witness by Counsel for the Defendant and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. WEIDNER:

Q Mr. Sawyer, you understand what you've been convicted of?

A Yes sir.

Q Mr. Sawyer, you were convicted of involuntary manslaughter in Arkansas, is that correct?

A Yes sir.

Q Tell us about what happened?

A Well I met this girl named Gwen. I met her from the Ship Ahoy, I think is the restaurant up there and we

dated there a couple of nights and I don't know, it seemed like we had a pretty good understanding with each other. Of course she had a little girl and her name was Laura at the time she was three. She hadn't quite turned four yet and I took them to the movies and out to eat and to the zoo and all of a sudden we moved in over in North Little Rock and rented a house over there. Well I was working laying bricks and Gwen, she was working at North Little Rock Furniture Company, I believe, over on West Capitol Street in North Little Rock and her mom, therefore, two days straight she took care of Laura. We would take her over there. I would drop the baby off at her mamma's house. It would have been her grandma's and I took Gwen to work and then I left where I dropped Gwen off to the job I was working on. And therefore two or [969] three days well her mamma took care of her but then her mamma, I wouldn't call her unstable but I mean she was a funny type person. One minute she was in a good mood and the next minute she was a person with ruffed up feathers. You couldn't get along with her. If you can understand that type of person, what I'm talking about, so that morning I asked her, I asked her are you going to watch Laura and she said no. She didn't have time and I asked Gwen are you going to stay home or are you going to go to work or are you going to stay home or what and she said no she was going to work and I said to heck with it so I took her to work with me so I carried her on the job with me and well she had what I am talking about a playsuit and of course I mean I kept moving her around because from where the sun, like if the sun was coming up on this side and I glanced over there and seen she was in too much of the sun well I would take her and



I kept her in the shade where she wouldn't be too hot and kept her from getting sunburnt.

Q Tell us what happened when Laura was injured, when you brought her to the hospital. Tell us what happened after that.

A Well on the morning the incident happened well I got up at five which it had been raining so I asked Gwen, asked me if I was going to go to work and I told her yeah I had to wait and see how it slacked up on the rain and she said she was going and for me to just take Laura and carry her to work with me because she [970] said she didn't want to take her over to her mamma's so I told her okay. So Gwen didn't drive her to work that day. She took a bus and I gave her a dollar or two dollars in change to catch a bus so that left myself and Laura there at the house. Well we lived upstairs where the kitchen table was over to the right in the kitchen and I had carpet and stuff in part of the house which in the apartment I hadn't had a chance to put in, I think it's linoleum or something down on the floor in the kitchen, therefore, it left bare concrete and anyway Laura, she was sitting there and I can still see her the same as I'm looking out there in the courtroom now and she was at the table. I gave her a bowl of cereal and two eggs and a glass of milk. Well she was sitting up there playing in the eggs which I was in a hurry to get to work to go on and try if I couldn't lay bricks I was going to do some inside work and she was sitting there, I mean well more or less she was playing in her food and I spoke to her and I told her Laura don't be playing and eat, so we can hurry up and go. Well she kept on playing and stuff and I reached over like to slap her on the shoulder and when I reached to slap her, in other

words, like that, she done this in the chair and the chair got unbalanced and over she turned. Of course when she did she hit her head on like I say, on the concrete floor. Well then she went as Mr. Boudousque stated in part of his report, I don't know if you've ever seen a muscle spasm but she went into [971] well her right hand went like this. Okay. And she was like, I don't know, I can't explain it. But I can explain it to the best of my ability and she was of course, it scared me.

Q I think we can understand how she was. What did you do at that point?

A I picked her up and put her in my car and I went downstairs and called and asked for an ambulance to come to that address and of course I stayed there and of course I went to the bathroom and brought a cold rag and laid it over her head, you know, at the back. Well the ambulance, he arrived I guess within three to five minutes. Well we left there and went to the North Little Rock Hospital which I couldn't ride in the ambulance because they said I wasn't, they put some legal way I wasn't her daddy or her mamma but I did follow them in my car behind them. We got to the hospital, well they wanted me to fill out certain papers and stuff and commenced asking me a bunch of questions. Well I answered the questions the best I could but I was trying to get the baby to get a doctor to examine her because I had my identification. I was proving who I was but I had no I.D. proving I was her daddy because I wasn't. It's true she was going under the name of Laura Durham and of course while at the hospital I did call the furniture company where her mamma was and I did go and I stayed at the hospital and I never did leave. I stayed there and she came to the



hospital there and Laura died at 5:00 o'clock that [972] afternoon. She died of a blood clot.

Q Pursuant to the incident you were convicted of involuntary manslaughter?

A Yes I was. Judge Kirby's Court.

Q This happened and you wever [sic] living at 64½ Magnolia North Little Rock, Arkansas.

A Yes, that's an upstairs apartment.

Q Mr. Sawyer, you understand you have been convicted of first degree murder?

A Yes sir.

Q Would you tell us what you know about the incident surrounding your conviction.

A I remember bits and pieces but as far as the whole thing no sir I can't.

Q Were you intoxicated?

A Yes sir I was.

Q Mr. Sawyer, tell us something about your life.

A About my life.

Q Yes.

A There is not really much to tell. I was born in Memphis. I was brought up on a farm and my mother died when I was three months old, took a four hundred and ten gauge shotgun and stuck it to her chest and she pulled the trigger and I just never have gotten over that. I always wanted to play ball and stuff when I was going to

school and have a life like any other normal kid, me and my daddy, we never did see eye to eye with each other. I tried to but some people you can reason with and some you can't and I did go out when I went [973] to play ball, it was from my house to Middleton, it was eight miles and I was hitching eight miles to go play ball and when I came back I got a whipping for going and playing ball but nevertheless I went and played anyway so this went on for a while and as I got older I decided to get away from that. I had a mare, that's a horse.

Q Do you have a son Mr. Sawyer?

A Yes sir I do.

Q Continue.

A But this was in May. I don't remember what year, but I sat on that horse and I proceeded from Middleton which is eight miles to a little town they call West Memphis, Arkansas. I proceeded to leave home and I left on that horse and the police or something, they never stopped me when I went through Memphis. I got to Arkansas bridge and I got off the horse, took the reins in my hand and led the horse across the Arkansas bridge. I got across the bridge there and got back on her and commenced at 6:00 o'clock across the weigh scales going to West Memphis and then I proceeded and left, turned left and proceeded to go to Brinkley. I got up there and it was getting dark so I asked this neighbor over there if there was somewhere I could go to water my horse and she told me they had a riding stable over there in West Memphis.



Q Excuse me Mr. Sawyer. How did you lose your eye?

A I lost my eye in a car wreck in 1971.

[974] Q Mr. Sawyer, do you understand the incident of which you have been convicted of participating in?

A No sir.

Q Why don't you understand them?

A Because I don't remember half of what went on.

Q Are you sorry that happened.

A Yes sir I'm sorry that happened.

Q Do you want to die Mr. Sawyer?

A No sir.

MR. WEIDNER:

I have no further questions.

CROSS EXAMINATION

MR. BOUDOUSQUE:

Q Mr. Sawyer, you say you don't want to die, correct?

A Yes sir.

Q At least you had that choice. Did you give that same choice to Frances Arwood? Does she still have that choice?

A Would you repeat your question please.

Q Don't you think Frances Arwood would have loved to have had that choice. Didn't you deprive her of the right to live?

A No sir I did not.

Q You didn't deprive her. How about Laura Durham. Did you deprive her of the right to live?

A No. That was stated in Judge Kirby's Court that was strictly an accident. It was tried to be avoided. It was an accident and stated in the Arkansas records.

Q Did you treat that child good?

[975] A Yes sir.

Q Did you ever hit that child?

A No sir I did not.

A No sir I did not.

Q Do you recall giving a statement to the police concerning that incident?

A Yes sir I know what you fixing to ask me and I will tell you the same thing I told them.

Q In your statement right here, this what I'm fixing to ask you?

A You are fixing to ask me. (Opposing Counsel examines document.)

Q What I'm fixing to ask you Mr. Sawyer –

MR. WEIDNER:

We object to the use of it and the Court sustained it.



MR. BOUDOUSQUE:

This is the defendant's own statement and he made certain representations and this is proper impeachment.

THE COURT:

This is his statement.

MR. BOUDOUSQUE:

I will lay the foundation.

MR. BOUDOUSQUE:

Q What was I going to say?

A On that statement you can read it and you can correct it and show me if I am right or wrong when I got to the hospital Laura did have some bruises on her because I was questioned about the bruises and which I told [976] them her mamma had spanked her but myself, I had not ever spanked her. I could do more with talking with her. I never spanked my own son.

Q You have never spanked that child before with a belt?

A No sir I have not.

Q What time did you take the child to the hospital. You said you were feeding her breakfast. What time was that?

A Would you repeat that.

Q You said you were feeding the child breakfast before she was taken to the hospital.

A Yes sir I was.

Q What time was that?

A I don't remember the time.

Q Was it in the morning?

A Yes sir.

Q Early in the morning before you went to work?

A Yes sir.

Q And that incident happened in the morning?

A I'm not sure exactly what time it happened.

Q When did you get up that morning.

A When did I get up. I got up at 5:30, the same as I always did.

Q After you got up at 5:30 about how many hours elapsed from the time you started hitting the child.

A Like I said when I got up it was raining and Gwen asked me if I was going to work. All right Gwen had to be at work at seven o'clock at North Little Rock Pharmacy Company. She had already left. She had already left and went to work so I would say prior between seven and [977] eight o'clock.

Q This incident happened in the early morning hours?

A I don't remember. I don't remember exactly what time of day it happened.

Q Do you recall giving a statement 11:28 p.m. 12-17-73?



A Yes sir.

Q In your statement it says yeah, that was her. Gwen, yes sir, did you whip Laura very much. Answer, quite a bit, yes sir. What did you whip her with. A belt. What kind of belt. Just a regular belt. What color was it. Brown with a love thing on it. Do you deny stating that?

A Do I deny stating that, no sir.

Q You do not deny that statement?

A You said did I deny it.

Q Do you deny it.

A You said did I deny it.

Q I'm asking you right now, do you deny this point in time ever making the statement of what I just read.

A I don't understand the question.

THE COURT:

Rephrase the question.

MR. BOUDOUSQUE:

Q Do you recall ever saying that?

A You asked me if I ever made that statement.

Q Yes.

A Yes sir I made that in the statement. That's my statement there.

Q So you did say that in that statement?

[978] A Yes sir.

Q Didn't you just tell this jury you never beat your child.

A I did not and I've never beat her.

Q Didn't you just say in your statement you beat her with a belt?

A I have spanked her but I have never beat her.

Q With a belt.

A I spanked here with a belt, yeah.

Q But you don't consider spanking a child with a belt necessarily beating her.

A No because I know what a beating is.

Q I'm going to show you a medical report where the child was brought to the emergency room, when she arrived at 1:44 p.m., that's quite a time difference between 5:30 in the morning and 1:44 p.m. is it not Mr. Sawyer?

A (The witness did not respond.)

Q Do you go to work at 1:44 p.m. in the afternoon?

A No sir.

Q In fact you go to work in the morning, do you not?

A I was working for myself.

Q But you work in the morning, correct?

A Yes sir.



Q How do you explain that child being brought to the emergency room at 1:44 in the afternoon if this incident allegedly occurred at the breakfast when she was eating her breakfast. Does she eat breakfast at 12:00 o'clock in the afternoon Mr. Sawyer?

A She was eating, I don't know if it was breakfast or just [979] what, but I know she was eating.

Q Now you don't know whether it was breakfast or what. I'm going to show you something else. It says the child was frail and appeared to be underweight particularly noticed was the fact the child had multiple scars on her body. We are talking about a child just under three years old are we not?

A Yes sir.

Q How did this child get multiple scars all over her body. Do you know?

A No sir I don't.

Q There were two healed scars on her forehead.

A I know where they came from, you are talking about the ones –

Q I'm talking about the ones in this report.

A She had a scar, the one you are reading.

Q There were two healed scars on her forehead and the scar the size of a nickle the right clavicle which appeared to be a burn scar.

A I can tell you she got that from a cigarette from her mamma.

Q She had a three inch scar across her instep.

A Over her foot she got that when she stepped on a broken bottle out playing in her grandparents back yard.

Q And both of her feet had big purple calcious appearing abrasions. How did she get that?

A She goes barefooted out there. She was going barefooted out there a lot where I was laying bricks and stuff.

Q She had multiple small bruises all over her body and how do you explain those bruises.

[980] A The bruises I don't know because like I told them at the hospital her mamma had spanked her earlier prior to that.

Q So for a three year old, three years into life Mr. Sawyer would you not say this child was fairly well beaten up and scarred?

A Well I got on to her mamma quite a bit for spanking her.

Q You got on to her mother.

A Her mother.

Q But you gave this child tender loving care.

A No sir. I corrected her trying to be a daddy to her, yes sir, but as far as beating her, no, because I know what it is like being beat.

Q So does Frances Arwood –



MR. BOUDOUSQUE:

I have no further questions.

MR. WEIDNER:

No questions.

THE COURT:

Do you have any other witnesses?

MR. WEIDNER:

No further witnesses Your Honor.

* * *

[985] MR. WEIDNER:

Ladies and gentlemen, I don't quite know what to say. I have never been in this position before. I guess I am doing exactly what Mr. Boudousque told you I was going to do. The decision whether Robert Sawyer [986] lives or dies is in your hands for one very simple reason. Should you decide today that he gets life imprisonment, well then the issue of whether or not he would be executed never comes up again. The issue remains a life only if you decide that he should be executed. I don't know what I can say for Robert Sawyer. He is a poor miserable little human being. He has had a hell of a life. He was involved in a very heinous act. He has been in a mental hospital. Like Doctor Arneson told you probably a sociopath. We know and it is never been attempted to be rebutted that Mr. Sawyer was intoxicated the day this incident with Frances Arwood occurred. You obviously believe that he is guilty of first degree murder. That is your verdict. How can we believe, I know I can't anyone in their right mind

or in possession of their faculties could do something like this. I personally do not agree with the death penalty. I don't think there is any circumstance when anyone has the right to kill another person no matter how we try to get away from it. That is what we would be doing is killing another person. Charles Lane is serving life imprisonment. I'm going to ask you to give Robert Sawyer the living death of life imprisonment. Don't kill. Thank you.

* * *



CITY OF MEMPHIS HOSPITALS

SUMMARY SHEET

Unit No. 443216

Name Robert Wayne Sawyer

* * *

CODE DISCHARGE DIAGNOSIS according to STANDARD NOMENCLATURE

* * *

Chronic Brain Syndrome [ ] with unknown cause manifested by mild mental retardation and abnormal EEG with behavioral disturbances

[R. 00179]

Date: 1/19/67

WESTERN STATE PSYCHIATRIC HOSPITAL BY; S.M. SOLOMON, M.D. Patient's Name:

SAWYER, ROBERT WAYNE 31,424
[R.00210]

CLINICAL RECORD NARRATIVE SUMMARY

Date of admission: 8/16/66
Date of discharge 12/26/66
Sawyer, Robert Wayne, 31,424

The following is a final summary on Robert Wayne Sawyer, case number 31,424, 16 years old, white single male, education special classes, religion Methodist, admitted for the first time on 8/16/66 from Shelby County by RI commitment (competency removed). He has been an outpatient at Galler Clinic since February, 1965, diagnosis moderately retarded, chronic brain syndrome manifested by moderate retardation and abnormal E.E.G.

*Reason for Admission*: On Sunday prior to admission patient allegedly walked in on a lady in an outdoor toilet near a church and tried to choke her. Two years ago patient was accused of attempted rape. In February, 1966, patient continued to run away. His aunt felt that she could no longer control his behavior and she returned him back to Memphis.

*On Admission*: Patient admitted attacking a 39 years old woman sexually but was not successful. He denied visual and auditory hallucinations.

*Physical Examination*: Non contributory. Height 5'3", Weight 123 lbs., Temperature 99.6, Blood pressure 110/90. Laboratory findings and x-ray findings within normal limits.

*Course in the Hospital*: He was placed on Mellaril 100 mgs., t.i.d., Phenobarbital 1 grain p.r.n. h.s. Patient wets his bed



every night. He had full privileges. However, he began to annoy the girls on the hospital grounds and privileges were removed. He was placed on 9M in the Administration Building. He began to work in the employee dining room, however, he failed to make an adequate adjustment. He talked about going home all the time. He felt that he was not in a position nor in the mood to work. He showed childish behavior, lack of responsibility and he went AWOL on the day when his family came to visit him. He was discharged December 25, 1966, 30 days after his AWOL. During his hospital stay he received some R.C.T.s as well as tranquillizing [sic] drugs with little improvement in his mental attitude.

*Mental Status on Day of Leave November 25, 1966*:

*Attitude and Behavior*: He is fairly neat and clean in appearance, pays some attention to the interview and interviewer.

*Stream of Mental Activity*: Productions relevant, coherent, through [sic] becoming circumstantial in character.

*Emotional Reaction*: Emotional deterioration, inappropriate affect, behavior, grimacing and mannerisms noted.

*Thought Content*: No overt psychosis. No ideas of reference, influence, false perceptions could be elicited. However he does feel that nobody liked him in school, that nobody is interested in him, even though his family visits him very often and apparently are overprotective of him.

Sensorium is clear. Orientation – oriented in all spheres. Memory is adequate both for recent and remote events. Attention and concentration fair. General information and calculation adequate and commensurate with his education. Apperception poor. Patient does not realize

the degree of his psychogenic dissolution. Insight, judgment and reasoning defective.

*Mental Diagnosis*: 22.7 Schizophrenic reaction, childhood type

*Physical Diagnosis*: None apparent

Patient is incompetent. Competency removed. Patient is a minor.

*Stress*: Severe

*Predisposition*: Severe

Apparently this patient failed to identify himself with parents or siblings and lack of ego strength and ego ideal is the dynamic cause of the patient's illness.

*Physical Diagnosis*: None apparent

*Prognosis*: Guarded

Even though the patient may adjust temporarily at home under the supervision of his parents who overprotect him he is incapable of competing in the outside world for employment. He will therefore need welfare assistance to stay at home.

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Date: 1/19/67

WESTERN STATE PSYCHIATRIC HOSPITAL BY; S.M. SOLOMON, M.D.

Patient's Name

SAWYER, ROBERT WAYNE 31,424
[R. 00211]

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**[LOGO]**
**Hospital for Joint Diseases**
**Orthopaedic Institute**

A teaching hospital of New York University School of Medicine

ORRIN DEVINSKY, M.D.
Chief, Department of Neurology-HJD
Director, NYU-HJD Comprehensive Epilepsy Center
Associate Professor Neurology, NYU School of Medicine

October 1, 1990

Nicholas J. Trenticosta
Loyola Death Penalty Resource Center
210 Baronne St, Suite 608
New Orleans, LA 70112

Re: Robert Sawyer

Dear Mr. Trenticosta:

I have reviewed the records you provided me (school records, mental health treatment in City of Memphis Hospital and Western Mental Health Institute, and various medical records), obtained a history and performed a neurological examination on Robert Sawyer on September 30, 1990. This report summarizes my findings.

History: Early evidence of mental retardation appears in the results of Mr. Sawyer's first IQ test (Stanford-Binet, IQ 73) at age 9 years. He had a severe pervasive learning disability. In addition, he exhibited aggressive behavior as a young child and at the time he was referred for special education his teacher described his behavior as "essentially aggressive in that he is always attempting to start something with punching,

pinching, pushing, etc. he picks on boys twice his size and usually ends up getting hurt".

His history is also remarkable for several episodes of significant head trauma with loss of consciousness for periods of between 45-120 mins. At age 5 years he fell off a bicycle and was unconscious for approximately 2 hours. at age 15 years he states he was kicked in the head by a horse and was unconscious for an unknown duration (one medical report states 2 hours) but first recalled events in the hospital approximately 60 hours later (corresponding to the period of post-traumatic amnesia). At age 21 years he was in a motor vehicle accident and sustained head trauma with loss of consciousness for approximately 2 hours. He lost his left eye in this accident. At age 25 years he was struck in the head by a car jack and suffered a loss of consciousness lasting 45 minutes and a 2 inch laceration on his upper forehead near the midline, with a residual scar.

In addition, a family member reports that Mr. Sawyer's mother attempted to suffocate him prior to her taking her own life when he was 3 months old, due to presumed postpartum psychosis. Suffocation with lack of oxygen to the brain may be the cause of Mr. Sawyer's mental retardation and neurological behavioral disorder.

Other records reveal that at age 16 years Mr. Sawyer underwent a course of electroconvulsive therapy, the details of which are not available in the medical records that were sent to me. Mr. Sawyer states that he received 3 shock treatments per day for a period of one month. He reported that a towel was placed in his mouth to protect his tongue and teeth. This suggests that neither muscle



relaxants nor oxygen were administered and this therapy may have caused brain injury.

General medical examination is remarkable for a 2-inch scar over the upper forehead, near the midline. The left eye is artificial.

*Mental status examinations*. He is alert and fully oriented. He had difficulty relating an orderly and clear description of the neurological history. He was inattentive. He was able to repeat 5 numbers forward and 3 numbers backwards. Speech was fluent with spontaneous work finding pauses. Repetition was mildly impaired. Comprehension was normal. Writing is normal. Confrontation naming was mildly impaired. Short term memory 0/3 at 5 mins on spontaneous recall and with cueing. Fund of knowledge and geographic orientation were mildly impaired. Praxis and right-left orientation are normal. he is unable to perform simple calculation (eg, 20-2 = 18). He made frequent errors on the hand sequence test with perseverations and inability to correctly perform the correct 3 step sequence with either hand. He was unable to copy and then spontaneously draw a simple sequence of figures. Visuospatial constructions are poor. *Cranial nerves*: I-XII were normal except: decreased smell left nostril, left eye enucleation with prosthesis, diminished light touch over left eye (VI). *Motor*: normal bulk and tone, strength is normal. Mild, 10th tremor of right upper extremity with volitional movements. *Sensory*: normal (except for left VI distribution as above) for light touch, vibratory, pin and proprioceptive sensation. *DTRs* 1 = throughout except left ankle absent. Toes downgoing bilaterally. *Cerebellar and gait*: normal except slight decreased left arm swing in spontaneous gait.

*Impression*: At an early age, Mr. Sawyer exhibited signs of significant neurologic brain injury. His diminished cognitive skills and behavioral disorder were evident at age 9 years and may have been idiopathic/genetic or possibly due to the alleged episode of attempted suffocation by his mother when he was an infant. Mr. Sawyer's early inappropriate aggressive behavior, described by his teacher, is not uncommon in children with neurologic damages. His repeated attacks on children twice his size, in which he "usually end(ed) up getting hurt, were not the product of a reflective behavioral style, but are characteristic of impaired impulse control and impaired ability to recognize the consequences of actions. By age 25, Mr. Sawyer had sustained significant head trauma on at least 4 occasions with loss of consciousness for periods between 45-120 minutes and post traumatic amnesia lasting up to 60 hours. Repeated trauma to the head results in increasing neurologic damage. In Mr. Sawyer's case, the severity of the cumulative damage was likely to be more pronounced due to his preexisting neurologic disease. The length of Mr. Sawyer's post-traumatic amnesia following the incident in which a horse kicked him in the head indicates that he suffered severe diffuse brain injury. Durations of over 24 hours are associated with significant neurologic damage.

The results of Mr. Sawyer's neurological examination confirm global cognitive impairment and specifically point to evidence of prefrontal dysfunction. This is an area that is often traumatized in head injury. The prefrontal areas play an important role in controlling basic drive functions such as sexual and aggressive thoughts and actions. Prefrontal brain injury results in an inability to



inhibit and control aggressive thoughts and actions. It affects the decision-making process: impulsive action precedes measured consideration. Intoxication exacerbates the impairment.

At the time the crime was committed, Mr. Sawyer's brain damage, specifically in the prefrontal areas, impaired his ability to control aggression and to comprehend the consequences of his actions. A long night of heavy drinking immediately preceding the murder intensified the neurologic impairment. Mr. Sawyer reacted violently and inappropriately when confronted with what he believed to be evidence that two young children had been drugged. Uninhibited, his aggressive impulses dominated his behavior for a period of time during which he could not comprehend that the increasingly destructive physical abuse of the victim would lead to her death. Brain damage, aggravated by intoxication, impaired his capacity both to appreciate the criminality of his conduct and to conform his conduct to the requirements of law.

Sincerely,

/s/ Orrin Devinsky
Orrin Devinsky, M.D.

---

[LOGO]
**Hospital for Joint Diseases**
**Orthopaedic Institute**

A teaching hospital of New York University School of Medicine

ORRIN DEVINSKY, M.D.
Chief, Department of Neurology-HJD
Director, NYU-HJD Comprehensive
Epilepsy Center
Associate Professor Neurology,
NYU School of Medicine

November 27, 1990

Nicholas J. Trenticosta
Loyola Death Penalty Resource Center
210 Baronne St, Suite 608
New Orleans, LA 70112

Dear Mr. Trenticosta,

I have reviewed the EEG and MRI scan on Mr. Robert W. Sawyer. The MRI shows a small punctate focus of increased proton density in the subcortical white matter of the medial left frontal lobe which supports the history of head trauma. Furthermore, there is a signal void on both the T1 and T2 weighted images in the superior sagittal sinus, consistent with thrombosis. This was identified by Dr. Normal Leeds, the Chairman of Radiology at Beth Israel Hospital in New York City and a world-renowned neuroradiologist. This is an unusual finding and is also consistent with a history of head trauma.

As I stated in my original report the type of neurological deficits Mr. Sawyer has are characteristic of frontal lobe injury. The MRI provides supporting evidence that he has brain damage. These abnormalities are a marker for other



brain abnormalities that are at a microscopic or functional level, and severely compromise his intellectual, emotional and behavioral functions. In short, Mr. Sawyer's brain damage in the frontal lobe severely limits his ability to conform his conduct to acceptable behavior, severely limits his ability to control aggressions and impulses, and contributes to his subnormal intelligence.

The EEG is within broad limits of normal.

In summary, the MRI supports the diagnosis of trauma-induced frontal lobe inury [sic]. However, it must be emphasized that Mr. Sawyer's multiple episodes of head trauma, and possible suffocation as an infant, may cause profound cognitive and behavioral disorder without any abnormalities identified in the MRI or EEG obtained years after the neurological damage occurred. This point is well known in the medical community by physicians who care for patients who have been suffocated or suffered significant head trauma.

If there are any questions concerning this case or issues that require further clarification, please do not hesitate to contact me.

Sincerely,

/s/ Orrin Devinsky
Orrin Devinsky, MD

ALEC J. WHYTE, M.D.
BOARD CERTIFIED PSYCHIATRIST
2905 MARFIELD ST., N.W.
WASHINGTON, D.C. 20008

TELEPHONE 202-462-3333

October 1, 1990

Mr. Nicholas J. Trenticosta
Loyola Death Penalty Resource Center
210 Baronne Street, Suite 608
New Orleans, Louisiana 70112

Re: Robert Sawyer

Dear Mr. Trenticosta:

At your request I conducted a psychiatric evaluation of Robert Sawyer to determine his past and current mental functioning and, in particular, to determine whether any psychiatric condition exists that would speak to the issue of mitigation in his legal predicament. The interview, lasting 2 hours and 45 minutes, took place at the state penitentiary at Angola on September 27, 1990. I also have read the various documents which you have forwarded to me, namely, school records, medical records, psychiatric records and summaries of social history. This report contains my professional opinion reached after having examined Mr. Sawyer, conferred with your staff and carefully reviewed the documents noted above.

Robert Sawyer suffers from, and manifests the symptoms of, the following psychiatric disorders:

310.10 Organic Personality Syndrome (formerly Organic Brain Syndrome)

317.0 Mild Mental Retardation



The format of this report will be (1) to provide a basis for the psychiatric diagnoses and to highest relevant specific deficiency symptoms associated with those diagnoses, and (2) to indicate what impact these symptoms would have on the required legal procedures.

Mild Mental Retardation: According to all of the classification manuals, mental retardation is defined by the coexistence of two features: significantly subaverage intelligence and deficits in adaptive behavior. The degree of retardation is determined by reference to both of these features. Robert Sawyer's IQ measurements have fallen in the 60's to low 70's [the upper side of mild retardation (50-70)]; however, his IQ scores, when taken together with the degree of deficit in his adaptive behavior which has been worsened by his Organic Personality Syndrome, places him together with the degree of deficit in his adaptive behavior which has been worsened by his Organic Personality Syndrome, places him clearly at the lower end of mild retardation – functioning at the third, perhaps fourth, grade level.

Certain biomedical causations and findings are associated with the retardation syndrome: heredity, particularly a low maternal IQ, persistent alcohol use during pregnancy causing fetal alcohol syndrome and perinatal malnutrition. Robert Sawyer's neonatal history suggests the presence of such conditions. The later-manifested impairments of neurointegrative functions could be related to his basic retardation but are certainly a sign of the more important diagnosis, Organic Personality Syndrome, and will be discussed in detail below.

Organic Personality Syndrome: This disorder is described in the diagnostic manual of the American Psychiatric Association (D.S.M. IIIR) as follows:

> "The clinical syndrome in a particular person depends principally on the nature and localization (in the brain) of the pathological process. A common pattern is characterized by *affective instability and impairment in impulse control or social judgment*. The individual may be *belligerent* or have *temper outbursts that are grossly out of proportion to any precipitating psychosocial stressor. Socially inappropriate actions, such as sexual indiscretions, may be engaged in with little concern for the consequences*. Another pattern is characterized by marked apathy and indifference. Both of these patterns may be associated with *damage to the frontal lobes*, and for this reason are sometimes referred to as 'frontal lobe syndrome' . . . The major personality change may be the development of *suspiciousness or paranoid ideation. . . . Mild cognitive impairment and irritibility* [sic] may be present. . . . The degree of impairment is variable. Despite relatively intact cognitive function, *poor judgment* may lead to such difficulties that the person may require constant supervision or even custodial care. . . . Socially unacceptable behavior may lead to *social ostracism or legal difficulties. Impulsive or explosive behavior may be dangerous to the individual and to others*. . . . Organic Personality Syndrome is usually due to structural damage to the brain. the most common causes are neoplasms (for example, meningiomas pressing on the frontal lobes, *head trauma (including the post-concussion syndrome)*, and vascular disease." [Italics are mine.]



The above description reads like a veritable summary of the life history of Robert Sawyer as it is expressed in the various social histories, school and medical records, and indeed in his own words to me.

The earliest laboratory indication of brain damage was an abnormal electroencephalogram (EEG) in 1965 when Robert was 14 years old (your file: Ii,A,1); however, the most probable etiology was a concussion sustained at age 5 years (1955) in an alleged fall from a bicycle following which Robert remained unconscious for a period variously described as 45 minutes to several hours (II,B,4) Subsequent head trauma was sustained in an alleged fight causing another several-hour period of unconsciousness (II,B,4). Although Robert's father and grandmother related these events to various medical personnel over several years, I have expressed the reservation ("alleged") because there exists here a pattern of early life trauma suggestive of severe physical abuse. For example, (1) no medical attention was sought for the above-mentioned comatose states; (2) somewhat suspicious explanations of prolonged unconsciousness are offered (falling from a *bicycle* at *age 5*; a fight with another boy in later childhood); a history of other early-life trauma (broken arm at age 4); and, finally, the history given by Robert and other family members of frequent, often severe, beatings by his father.

Although brain damage could be the result of a prenatal event or neonatal anoxia, the history most strongly suggests a post-concussion etiology following single or repeated head trauma in late childhood. The functional manifestations of Robert Sawyer's brain damage, or Organic Personality Syndrome, are (1) behavioral, related

principally to poor impulse control, and (2) cognitive related principally to a specific defect in information processing.

Behavioral Symptoms. It is unclear whether Robert Sawyer's nightly enuresis, which has continued to the present day, is a result of his Organic Personality Syndrome, since its exact date of onset is unclear and it could be related to local genitourinary structural abnormality. It is known that enuresis of this severity is often associated with an abnormal EEG.

Robert's behavioral symptoms fall mainly in this characteristic area of poor control with regard to hyper-aggressive and hyper-sexual impulses:

– "Bobby's behavior is essentially aggressive in that he is always attempting to start something with punching, pushing, pinching, etc." Teacher's note 8/18/59. Age 8. (I,A,1)

– "Brought in on lunacy warrant . . . at request of Juvenile Court. Father says his son is 'over-sexed' since 8 years of age. Barred from Millington School because of rape accusal . . . has a habit of destroying female undergarments . . . Made obscene phone calls; was charged . . . He (patient) complained, 'I'm over-sexed' and that he, 'gets angry easily, very easily' . . . History indicates impulsive ego disoriented [sic] with poorly directed aggressive drives and sexual orientation. Masturbates 4-6x daily because of rage volunteered by patient." Physician's Admission note. City of Memphis Hospital. 6/17/66. Age 15. (II,A,1,2)



– "He seeks hospitalization because he is 'over-sexed.' Admits to attacking a neighbor of 39 years old sexually but was not successful." Physician's Admission Note. Western State Hospital. 8/16/66. Age 15. (II,B,1)

– "Patient's father dated the onset of illness to two years ago (age 13). At that time the patient was accused of attempted rape .. . . . Father states patient frequently got into fights with his peers. . . . The patient's father related that, for about two years, the patient had 'taken women's panties and relieved himself.'" Social Work History. Western State Hospital. 8/64 (II,B,4)

– Robert Sawyer informed me during the September 27th interview that he left home permanently at age 17 after a particularly violent fight with his father in which a shotgun over which they were struggling "went off," injuring neither man. This followed Robert's coming to the defense of his stepmother whom his father was beating. At age 18 he married, and described to me a chaotic life until convicted of manslaughter in the death of a four-year-old girl in 1972. After two years in prison, Robert immediately resumed his unstable and impulsive life, including a second marriage without divorce from the first, until convicted of the offense for which he is currently under sentence.

– As might be expected during periods of incarceration, 1972-74 and 1978-present, Robert Sawyer's behavior was less out of control because of the external structure and supervision provided in that environment.

*Cognitive symptoms*. Two main areas of cognitive dysfunction have been noted in Robert Sawyer, and both are characteristic of an Organic Personality Syndrome:

1) A pervasive perception and attitude of suspiciousness and paranoid ideation. In every document reviewed (school records, medical and psychiatric records, social histories), some particular notation of this aspect of Robert's thinking was entered. It was obvious during my interview with him with regard to both his past and current life situation.

2) A prominent, specific defect in information processing, namely, and inability, or severely impaired ability, to perform abstract thinking, to make generalizations or to understand abstract concepts. This results in a symptomatic speech pattern consisting of concreteness, preoccupation with relating details, perseveration, repetitiveness and a particular type of confabulation; that is, filling in with unfactual or approximative, concrete details and guesses when confronted with situations requiring even relatively simple abstract reasoning. In brief, the multiplication of concrete details is used as a substitution for, or cover up of, the lack of the ability to abstract and generalize. Sawyer exhibits some rudimentary insight into this defect when he says "All I can tell you is what I see," and "I can't put my words where they want to go."

Robert Sawyer's brain can process or transform the sensory input of his experience into concrete signs or signals which simply indicate the need for some immediate behavioral response. He is grossly defective in being able to transform the data of his sensory input into symbols that represent the experience in an abstract and therefore generalizable form.



During the painstakingly detailed monologues in response to my questions, Robert invariably paused for 20-120 seconds when reaching for an abstract word. For example, when describing his first experience with sexual intercourse, he called it (after a significant pause) his "initiation." When asked what initiation meant, Robert answered (after a long pause) "Like I said, it's the first time someone has sex." When asked what else initiation could refer to, Robert repeated, "It's just your first sex." Likewise, in relating a job experience, he paused at length before finding the word to describe his employer. "It was Manpower I worked for," he continued. I asked how he remembered the word manpower; he answered, "I pictured the street corner that the building was on where we checked in." I asked what manpower meant; he answered, "It's a place where men are sent out to jobs." When asked what else might manpower mean, he responded after hesitation, "A man with big muscles." Clearly the capacity to associate abstract words with a generalized concept rather than with a single concrete experience is lacking in Robert's brain functioning.

*Forensic Relevance*:

(1) Behavioral Symptoms. the impulsive aspect of Robert Sawyer's behavior in response to emotional interpersonal situations or to his own aggressive and/or sexual mood occurs with minimal if any, intellectual reflection. Any experiences such as moral culpability, consideration for others involved or any understanding of the generalized significance of his behavior is lacking, regardless of outward appearances. His behavior in response to emotional signals is akin to a reflex arc having perhaps ritualistic but not truly rational significance.

(2) Cognitive Symptoms. Robert Sawyer's deficit in using or comprehending abstract words and symbols severely limits his capacity to understand general legal concepts and their particular applicability. Therefore, dialogue with counsel regarding defense strategies, plea bargaining, ect., could not be understood beyond some limited, concrete sign value which he would ascribe. For example, he insisted during my interview that "evidence" was "something lawyers used against you." When asked if evidence could be used in one's behalf, he answered, "No, only against you." When asked to define evidence, he said, "It's what lawyers put on a yellow pad like the one you're using." No more adequate definition could be elicited.

*Summary*: It is my opinion that Robert Sawyer suffers from an Organic Personality Syndrome secondary to frontal lobe brain damage, which resulted from head trauma and concussion. This diagnosis is consistent with the diagnosis of Chronic Brain Syndrome (older terminology) made in 1966 by the staff of the City of Memphis Hospital. This condition, complicated by mild mental retardation, has seriously compromised, and continues to compromise, this individual's capacity for reflective behavior and for the comprehension of concepts involving any degree of abstraction or generalization, such as are essential to legal procedure. This diagnosis should therefore serve purposes of mitigation in the consideration of the judicial consequences of Robert Sawyer's behavior.



Should there be the need for any clarification of this report for consideration of matters which I may have overlooked, please write or call me.

Sincerely yours,

/s/ Alec J. Whyte, M.D.
Alec J. Whyte, M.D.

[LOGO]
**fisher and associates**

**113 Mallette St. • Chapel Hill, NC 27514 • Phone 919 968-4931**

## PSYCHOLOGICAL EVALUATION

Name: Robert Sawyer
Evaluator: Dr. Brad Fisher
Dates of Evaluation: 9/20/90
Place of Evaluation: Death Row, Angola Prison – Louisiana
Date of Birth: 10/8/50
Age: 30
Education: Seventh Grade (1963-64) – Special Education

## REFERRAL AND IDENTIFYING INFORMATION

This 39 year old white male is currently on Death Row status at Angola Prison in Louisiana where he has been since January of 1983. He was referred for evaluation by his attorney, Nicholas Trenticosta of the Loyola Death Penalty Resource Center. Their address is 210 Baronne Street, Suite 608, New Orleans, Louisiana 70112. The purpose of the evaluation was for the assessment of overall psychological dynamics, including an intellectual assessment, neurological screening, and the evaluation of his personality profile.

## BACKGROUND OF EVALUATOR

Dr. Fisher is a graduate of Harvard University (cum laude 1972) and one of only two programs in the country offering a specialization in forensic or correctional clinical



psychology (University of Alabama, 1976). His dissertation there was in the prediction of dangerous behavior, and his subsequent work over the last 15 years has always been in the area of forensic clinical assessments, most frequently of those who have committed violent crimes. He currently resides in North Carolina, where he has been a teacher both on the staff at the University of North Carolina and at Duke University. Details of this background are available in the attached vita.

## TESTS ADMINISTERED AND MATERIALS REVIEWED FOR CURRENT EVALUATION

The following materials were reviewed and play a role in the opinions expressed in this report.

I. School Records Summary
   - A. Referral for Special Education Evaluation
   - B. Psychological Report
   - C. Accumulative Record Sheet
   - D. Medical Form

II. Mental Health Treatment Summary
   - A. City of Memphis Hospital
     1. Admit Notes
     2. Physician's Notes
     3. Nurses Notes
     4. Clinical Chart
     5. Discharge Notes
     6. Discharge Diagnosis

B. Western Mental Health Institute Summary

1. Admit Notes
2. Doctor's Orders
3. Nursing Notes
4. Social Case History
5. Medical History/Mental Status
6. Staff Conference
7. Court Commitment Papers
8. Progress Notes
9. Escape Report 1 & 2
10. Final Narrative Summary

III. Medical Records Summary

A. Methodist Hospital Emergency Room

1. Chief Complaint – Scleral Laceration
2. Operation Report
3. Physician's Orders

B. Methodist Hospital

1. Chief Complaint – Pthisis Bulbi – painful
2. Operation Report
3. Physician's Orders

C. University of Arkansas Medical Center Emergency Room

1. Chief Complaint – Syncopal Episode



D. University of Arkansas Medical Center Eye Clinic

1. Replacement of Prothesis

E. City of Memphis Hospital Emergency Room

1. Chief Complaint – Injury wrist-hand

F. City of Memphis Hospital Emergency room

1. Chief Complaint – Fell into river

In addition to these materials reviewed, several tests were administered over the approximately four hours spent on the Death Row unit, and play a role in the opinions expressed in this report. These include the following:

1. Intellectual Assessment
   a. The Wechsler Adult Intelligence Scale (partial)
2. Neurological Screening
   a. See also Wechsler test above
   b. The Bender Visual Motor Gestalt
   c. Halstead Rietan Battery (partial)
   d. Neurological Screening Examination
3. Projective Testing
   a. The Incomplete Sentences Blank
   b. The House-Tree-Person Test
4. Other
   a. The Personal History Checklist
   b. The Mental Status Examination

## DEVELOPMENTAL AND BACKGROUND DATA

Robert Sawyer appears to have been raised in a chaotic and abusive home environment, nearly always functioning in circumstances below the poverty level. Specifically, it seems worthy of note that his father was physically abusive over several years and that his mother suffered post-delivery psychosis and committed suicide. Reports further note the suspected cultural-familial dysfunction, although this is relatively obvious from the points already stated.

By the time Robert was nine, he had been referred to the Special Education Department for testing because of difficulties in learning. In addition, these problems included bedwetting. This culminated in scoring at a level zero in reading, math and spelling, even when he had been in school three years (being in the second grade at that time).

Recognition of developmental and psychological problems continued, and resulted in psychological testing when he was eight years old. At this point, he scored a mental age a couple of years younger than his chronological age, and an IQ of 73. At his point, he was recommended for the EMR (Educationally Mentally Retarded) class.

An overview of his school records demonstrate at least a couple of points. First, his abilities were seriously regressed or retarded with consistent grades of D or F from the time he was six years old. It appears that some of the teachers believe that this is due to his home environment, whereas others are unclear as to the etiology of these learning and developmental problem issues.



In addition to the death of his mother, it appears that a primary reason for his discontinuation of school at such an early age (i.e., 1963-64) had to do with the increasing problems which eventually led to hospitalization for mental health treatment at the age of 14. To summarize a long series of institutionalization and treatments starting at this point, it should be noted that the mental problems already discovered through EMR placement earlier in his life appeared to have been exacerbated by the age of 14 into behavioral disturbance, and appeared to continue at a high level (i.e., resulting in mental health placements) for the rest of his development.

To be more specific, his placement at the City of Memphis Hospital in June of 1966 included the prescription of Thorazine (50 mg PO). It is noteworthy that this is a medication most frequently administered and recommended primarily for the treatment of psychotic conditions on the part of the patients. Further, it is noteworthy that the discharge diagnosis, even at this early point in his life, was a "Chronic Brain Syndrome manifested by mild mental retardation and abnormal EEG with behavior disturbance."

Later, in 1966, he was hospitalized at the Western Mental Health Institute (from 8/16/66 until 11/25/66). During this hospitalization, doctor's orders included Mellaril at 100 mg TID as indicated for a possibly psychotic condition. In addition, he was given Phenobarbital, which is usually prescribed for epileptic conditions and other neurological problems. Furthermore, it should be noted that even at this early time in his life he began to be administered ECT, commonly known as shock therapy. His own reports to me of this experience is that he hated those

experiences, since they frequently resulted in his inability to remember even things that he knew as common day-to-day occurrences the day before (specifically, he forgot the name of a cup and of a bottle of ketchup). The reports from these early case histories also indicate possible psychiatric treatment recommended in connection with psychosexual problems. By the end of 1966, it appears that his medical history included more that one institutionalization, with the discharge summary from the second admission resulting in a diagnostic impression (9/22/66) of a schizophrenic reaction, childhood type, with the notation that this impairment was moderate. In this same visit he was certified as incompetent (document dated 1/7/67). Among the notes given during this time of his development were ones that noted that his insight, judgment, and reasoning were defective, and that he had a childhood type of schizophrenic reaction.

Later in his development, he continued to develop a history of institutionalizations that included several emergency room placements, and a possible other mental health placement in either Benton or Denton, Texas at the Temple Facility (records not available at this point). These hospitalizations included one at the Arkansas Medical Center in Little Rock in 1973 in which the patient had dizzy spells and felt "rubbery." He also had a blackout because at that time he was suffering from syncopal episodes. In addition, there is a case history data indicating two severe head injuries which rendered him unconscious.

In addition to the overall chaos of his environment, centering on lack of any normal parenting, probable abuse by the father, suicide from the mother, and multiple



placements before being on his own at the age of 14, it should also be noted that Mr. Sawyer has been through two dysfunctional marriages. The first marriage lasted approximately a year and resulted in a boy (Scott Wayne Sawyer). It should be noted that he was married in this case to a Rosemary Marie Reeves when he was only 18 years old (in 1969) and that the boy was born in May of 1970, but that they had separated by 1971.

His work history literally begins with sporadic odd jobs starting after running away from home between institutional placements at the age of 17, at the age of 14, and it continues unabated until the time of his current arrest. Most of these jobs had been on riverboats or as a deck hand connected with this area of work. He has also worked with horses and at stables off and on.

His only previous incarceration was for one year and ten months at the Cummin's Prison in Little Rock, Arkansas for an involuntary manslaughter conviction based on a four year old child who had died from falling off a high chair, and who was in his care.

Finally, it should be noted that he describes his development as culminating in a move towards excessive drinking starting in 1978 because of his combined problems. It should be noted that he was 28 years old when he was arrested on the current offense in 9/27/79. This heavy drinking (not including drug use, however) culminated in a binge around the time of the crime which appears excessive even by extended standards. His self report has him drinking starting at 8:00 the night before the crime, all night, until nearly 7 the next morning, when he has consumed an innumerable number of drinks including

Mad Dog 20/20, Jack Daniels and Coke, and Old Grandad Whiskey, combined with other types of boilermakers. Furthermore, he recalls having almost nothing of substance to eat during this time. The murder occurred at approximately noon on the next day. It is his recollection that he was seen by several others that morning upon coming home, who noted his level of drunkenness, to the point where he had to crawl on his hands and knees from the car. In his own recollection, he says that he had nearly no idea where he was for four days in the jail after his arrest. Delirium tremens symptoms were also noted.

## OVERVIEW OF TESTING RESULTS

There are considerable indicators of both neurological dysfunction (brain damage) and of a mild level of mental retardation (current full-scale IQ measured 68 with previous scores falling lower, including findings in the moderate retardation range – which requires a full scale score below 55). These results are consistent with his history of multiple head injury, abnormal EEG and syncopal episodes.

In the latter category, it should be noted that the current results are somewhat higher than the initial testing done in 1966 which report him at the moderate level of mental retardation (see State of Tennessee Department of Mental Health Medical History and Mental Status Record first – page one, paragraph one). However, the difficulty in a final opinion considered by this evaluator, is the complexity in separating out the previously noted condition through IQ score and EMR placement, as separate from



the neurological impairment (also noted in the records from the age of 16).

Although the other condition was previously noted as a "chronic brain dysfunction" the current evaluation has findings suggesting that this brain dysfunction may be somewhat diffused, but more relegated to right hemisphere damage. This is noted through extremely poor performance on any areas requiring spatial evaluation and/or replication. His Bender Visual Motor Gestalt test includes multiple mistakes, primarily in the area of figure angulation, and figure size (although there are difficulties in other areas such as figure rotation as well). These kind of problems are mimicked on the Rietan-Indiana Aphasia Screening Test as well through repetition of such figures as the cross, the triangle, and the key. The fact that the chronic brain dysfunction has been noted during his childhood, however, is suggestive that the impression that this is due to neurological dysfunction rather than to sight dysfunction alone, is probably the most realistic.

A final note on the testing should point out that there was every indication that his client was attempting to perform at his best ability and was making no attempt to manipulate the examiner in any direction. Consequently, with the possible exception of the unknown influence of loss of his left eye, I believe the current results can be considered to be valid.

## SUMMARY AND OPINIONS

It is the opinion of this evaluator that, while this client does not suffer from a psychotic condition, or a condition of any kind of major affective disorder, he may well

suffer from a level of neurological dysfunction, that in turn may be connected with his consistent scoring in the mentally retarded range of intelligence. I believe that this latter scoring is more readily attributable to neurological dysfunction than to his lack of schooling. Furthermore, I believe that these findings of neurological dysfunction may well be related to connected behavioral dysfunction, including the possibility of poor judgment under stress and impulsive acting out behaviors, especially at those times. Indicators of brain damage in clients reporting uncontrollable violent-rage behavior are often indicative of possible frontal lobe dysfunction. When these handicaps are combined with the self administration of massive amounts of alcohol, it is probable that whatever neurological deficits are present will be exacerbated. Consequently, it is likely that these problems were exacerbated at the time of the crime because of the data suggesting large levels of alcohol ingestion without nutrition, and consequently may have resulted in a psychotic breakdown at that point (i.e., not a chronic condition, but one caused by the combination of neurological handicap and alcohol ingestion without nutrition). Psychosis can best be explained in this context as a condition where a person is not in touch with reality and may have severe limits in cognitive and judgmental functions such as the ability to differentiate between right and wrong. It is important to note that any diagnosis of psychopathic trends should not have been made for this, or any client, without previously ruling out the possibility of brain damage.

Report Submitted,

/s/ R. Brad Fisher, Ph.D.
R. Brad Fisher, Ph.D.

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State of Tennessee

County of Shelby

AFFIDAVIT OF RUBY WILKERSON

1. My name is Ruby Wilkerson. I am a resident of Shelby County and am over eighteen years of age. I am Robert Wayne Sawyer's aunt. His mother was my sister.

2. My sister was a very sad, broken-hearted woman. She was treated horribly by her husband Robert. He never had a kind word or gesture for her. I believe his abuse of her drove her to kill herself.

3. After my sister died, Robert Sawyer turned all of his hate and anger on his son, Robert Wayne. It was like he was unable to love anybody, even his own child. Robert Wayne was beaten, taunted, humiliated, and rejected by his father. He was told that he was stupid and that he couldn't do anything right and he quickly grew to believe it as truth. He became a quiet, withdrawn child, with no friends or self-confidence.

4. Robert Sawyer destroyed his wife's life and if that wasn't enough, he destroyed his son's too. I believe if Robert Wayne had gotten the care and love and attention he needed when he was a child, he wouldn't be where he is today. If any of Robert Wayne's attorneys would have contacted me, I could have told them about Robert Wayne and testified in court.

Further affiant sayeth naught.

/s/ Ruby Wilkerson
Ruby Wilkerson

Sworn to and subscribed before me this ___ day of Oct., 1990

/s/ Illegible
NOTARY PUBLIC

My commission expires: 1-23-94

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State of Tennesse [sic]

County of Shelby

AFFIDAVIT OF JEANNIE WARF

1. My name is Jeannie Warf. I am a resident of Shelby County and am over eighteen years of age. I am Robert Wayne Sawyer's aunt. His mother was my older sister.

2. I grew up right across the road from the Sawyer family. I was friends with their two daughters, Mildred and Virginia. I wasn't friends with their son Robert though. He was so cruel and hateful that I was a little afraid of him and tried not to be around him too much, especially alone. He would do things just for spite and to be hurtful. I remember once, I had a new coat (which was something that you didn't get very often in those days) and I was so proud of it and happy. I went to the Sawyer's to show the girls and while I was there, Robert lit a firecracker on my back and burned a big hole in my coat. I remember he just laughed and laughed about it too. It was like he was only happy when other people were miserable.

3. I don't believe my sister Betty had one happy day after she married Robert. They lived with Robert's family in a two room house that was falling down around them and even had to go across the way to use the next-door church's outhouse. Robert never wanted her to visit with us and I remember Betty crying because he would never let her take their daughter Glenda Sue across the road to see my mother and daddy. He would say such terrible things to Betty, cursing at her and making fun of her. He treated her as if he hated her.

4. Betty was sick a lot while she was pregnant for the twins Robert Wayne and Betty Jane. She stayed in bed almost the whole nine months and I believe at one point, she had uremic poisoning. Robert was no help to her and seemed very unconcerned about her health.

5. By the time the twins were born, Betty had suffered about five years of Robert's abuse. He had her in such a state of constant misery that she was desperate to get away at any cost. She paid for her freedom from him with her life and Robert Sawyer didn't even care. My sister wasn't in her grave but three weeks when he sent his four year old little girl over to my house with a note for me. The note was asking me to marry him. I just folded it up and didn't say a word. I really couldn't believe that he had had so little feelings for my sister that he thought he could just replace her like an old mule. I knew one thing though, he would never get a chance to destroy me like he did my sister.

6. When my sister died, Robert poured all of his hate and anger on little Robert Wayne. As soon as Robert Wayne was old enough to walk and talk, his father had him doing chores all day long. By the time he was eight years old or so, he was having to do things like clearing land, really men's work. Robert treated his son like a slave with never a kind word or show of any love or affection.

My husband would always say how he could hear Robert cursing Robert Wayne all the way across the road. Robert Wayne was very badly mistreated by his father and cruelly beaten at the drop of a hat. I'm sure that he never felt anything but hate and scorn from his father.



7. Robert Wayne quickly grew into a rather withdrawn, odd child. I remember an incident when he took all of my sister-in-law's and my underwear out of our dresser drawers. When we found them, the crotches had been cut out of the underpants and some of them were burned. I always felt a little uncomfortable around Robert Wayne after that. To me, that indicated a problem that his father should have taken him to a doctor for, but of course all his father ever did was beat him.

8. When Robert Wayne grew up and got married, he and his wife split up and he got custody of their child, Scotty. Scotty lived with Robert Wayne's father and step-mother while Robert Wayne worked out of town. Robert has abused Scotty just like he did Robert Wayne. He has beaten him, forbidden him food, punched him in the face and head, and even knocked him out.

9. Robert Wayne has lived a tormented life. He grew up without a mother or really even a father. He went through years of abuse and neglect, probably never feeling loved or wanted or anything but scared and hated. I wish that his attorneys would have contacted me at the time of his trial so that I could have testified to what I know about his life.

Further affiant sayeth naught.

/s/ Jeannie Warf
Jeannie Warf

Sworn to and subscribed before me this 30th day of September, 1990

/s/ Vernon V. Dollahite
NOTARY PUBLIC

My commission expires: My Commission Expires May 18, 1991

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State of Arkansas

County of Mississippi

AFFIDAVIT OF VIRGINIA KIMBERLIN

1. My name is Virginia Kimberlin. I am over eighteen years of age and am a resident of Mississippi County. I am retired from a career in social services and have been a Councilwoman on the Joiner City Council for the past two years. I am Robert Wayne Sawyer's aunt. I am his father's oldest sister.

2. I grew up on my father's farm in rural Tennessee. There were three of us children: me, my brother Robert, and my sister Mildred. We lived with my father and mother in a two room house without running water, electricity, or indoor plumbing.

3. My brother Robert was a cruel and hateful person from childhood. He would get my sister and me alone and terrorize us then laugh about it. He always got away with what he did too, because my daddy protected him and prevented him from being punished. Robert grew up believing that he could do anything he wanted to other people and get away with it.

4. Robert married Betty Montgomery, a girl who had grown up across the road from us. From the beginning, he treated her like dirt, a piece of property that he could do anything he wanted with. I don't think he ever showed her a loving word or touch. He talked to her like she was his worst enemy instead of his wife and treated her like a dog. He raped her all the time and he didn't care who knew it. He had no respect or feelings for her.

5. Betty suffered a lot with my brother and when she got pregnant the second time, her problems multiplied. She was very sick throughout her pregnancy with kidney trouble and had to be in bed almost the whole time. She took a lot of prescription drugs while she was pregnant. She had a very difficult delivery, and nobody even knew she was going to have twins until the second baby was born. I think she lost her mind then, especially since there was hardly enough money for one baby, much less two. When she came home from the hospital, she seemed to get more and more depressed. My brother continued abusing and mistreating her. One day, she picked up a fire poker and it seemed that she was going to try to kill herself or the twins with it. My mother stopped her just in time. A few days later, Betty's doctor, Dr. Cates examined her. He told my mother and brother that Betty needed to be seen by a psychiatrist. Betty overheard this and flew into a rage, saying she wasn't crazy and didn't need a psychiatrist. The next morning, she went outside and sat in the backseat of the family car. She propped the shotgun up against the front seat, aimed it at her heart, and pulled the trigger with her toe. She died immediately.

6. My mother had a nervous breakdown after Betty died. She really loved her and I think she felt bad about the way Robert had mistreated her. Also, there was now three motherless children in the house, two of them only four months old. By this time, I was married and had two older sons. I offered to take one of the twins to stay with me until the family situation settled. Betty Jane came to live with me and Robert Wayne and his older sister Glenda Sue stayed with their father and grandparents.



7. I am so glad that I was able to take Betty Jane with me and rescue her from her father's abusiveness. With Betty Jane and her mother gone, however, little Robert Wayne seemed to bear the full weight of his father's anger and frustration. Robert worked him in the fields and clearing land like he was a grown-up. Nothing Robert Wayne could ever do was right according to his father. From third grade on, he was in special education classes and his father made fun of him and called him names for that. Robert also called that poor child things I wouldn't repeat. He would beat him with anything he could get his hands on. I remember once, after Robert Wayne had been horse whipped by his father, I told him something about not treating that boy so bad and he told me that Robert Wayne was the only thing in the world that was his and that he could do anything he wanted with.

8. I know that all those beatings and humiliation left their mark on Robert Wayne. He was such a loner, even as a little boy, partly I think, because his father wouldn't let him go places and do things with the other boys. When other cousins would visit the house, Robert Wayne was ordered to work, usually doing meaningless chores, so he was never allowed to play with them. He stole his aunts' underclothes and destroyed them. He had no self-confidence and was wetting the bed still when he got married. I don't believe Robert Wayne ever felt loved or wanted or secure with his family. His father only showed him hate. To be honest, his father really never has shown much of anything but meanness to anybody. The only ones Robert Sawyer ever loved were his two dogs and Robert Wayne was so desperate for his daddy's love and

attention, that he stole the dogs and took them out on the road hitchhiking with him.

9. There have been a lot of hard feelings and bad things in the Sawyer household. I wish my mother was still alive so that we could ask her about all of the other details of Robert Wayne's childhood. There are things that we will probably never know and his father is not talking.

Further affiant sayeth naught.

/s/ Virginia Kimberlin
Virginia Kimberlin

Sworn to and subscribed before
me this 1st day of October, 1990

/s/ Joe Ann Ford
NOTARY PUBLIC

My commission expires: MY
COMMISSION EXPIRES 11-15-92

(SEAL)

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State of Tennessee

County of Shelby

AFFIDAVIT OF NELL MONTGOMERY FRAKES

1. My name is Nell Montgomery Frakes. I am a resident of Shelby County and am over eighteen years of age. Robert Wayne Sawyer is my nephew. I was married to his mother's brother.

2. Ever since I have known Robert Sawyer, Robert Wayne's father, he has been mean and abusive to everyone he comes in contact with. He has never had a kind word or feeling for anybody. All his life, he has bullied and beaten his family from his son Robert Wayne to his second wife, Mott and his grandson Scotty. Robert always demanded that things be exactly the way he said and that no one do anything that he didn't say was okay. I remember a terrible beating that he gave his second wife once. He had a rule that when he was working out of town, she couldn't use the family car. If she had to go to the store or doctor while he was away, she would have to get a neighbor to take her or walk. One day when he came back home and checked the mileage of the car, he found that his wife had used it to go into town. He ran into the house and grabbed her by her hair and dragged her out of the house, across the front yard, beating her and screaming at her the whole time. He was just that kind of man who always had to prove that his word was law.

3. I think little Robert Wayne led a miserable life. There was something not right about him. He was always withdrawn and seemed to have no self-confidence. I believe his father was the reason Robert Wayne acted the way he

did. Robert was terribly abusive to Robert Wayne, he physically beat him and constantly cursed him.

4. I became more convinced than ever that Robert Wayne needed help when I discovered that he was taking my underwear, ripping them up, and masturbating on them. He was about twelve years old. My sister-in-law told me he did the same thing to her underwear. I was very concerned about him, and knew he needed help but I also knew that his father wouldn't do anything to get help for him.

5. None of Robert Wayne's attorneys contacted me before his trial but if they had, I believe I could have told them these things about his life that would have helped them and the jury understand him better.

Further affiant sayeth naught.

/s/ Nell Montgomery Frakes
Nell Montgomery

Sworn to and subscribed before
me this 1st day of October, 1990

/s/ Illegible
NOTARY PUBLIC

My commission expires: 11-4-90

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State of Tennessee

County of Shelby

AFFIDAVIT OF MABLE SCHUMACHER

1. My name is Mable Schumacher. I am a resident of Shelby County and am over eighteen years of age. I am Robert Wayne Sawyer's aunt. His mother was my younger sister.

2. When I was growing up, my family lived right across the road from the Sawyers. I was best friends with their two daughters, Mildred and Virginia. I remember Robert Sawyer (Robert Wayne's father) when we were children. He was extremely mean and seemed to take pleasure in physically hurting his sisters and I tried to stay away from him as much as I could.

3. As we grew up, I finished high school and went off to business college in nearby Memphis where I lived until I married. couldn't believe it when I heard that my beautiful and talented sister Betty had married Robert Sawyer against the wishes of my parents. She moved in with him and his parents and then their children all lived together in a two room shack without even a bathroom.

4. Each week when I visited home, I would see Betty and I could tell that she was under a lot of tension. Robert had such a mean way about him, with a dirty mouth and violent temper. If something didn't get done exactly the way he wanted it, he would fly off into a rage. I never saw him be any other way than overpowering and contemptous [sic] with Betty.

5. Robert Sawyer killed my sister, just as sure as if he had pulled the trigger himself. His overbearing personality, hatefulness, and abuse destroyed my sister's spirit and her will to live. He cared so little about Betty that right after she died, he sent a note with his little daughter to my other sister still at home, asking her to marry him! I remember feeling sorry for my nieces and nephew being left with such a heartless parent.

6. As time went on, I would see my nephew Robert Wayne and my niece Glenda Sue when I visited my mother every week. Robert's twin Betty was sent to live with Robert's sister Virginia soon after her mother's death and she never returned to live with the family.

7. From early on, Robert Wayne was a withdrawn child, very reserved and without any self confidence. I think he was told by his father that he was dumb and couldn't do anything right so often that he believed it himself. There was something not quite right about Robert Wayne. At the time I thought he was just lonely and felt unloved, but now I realize that he was mentally disturbed. When he was about eight years old, he took all of his Aunt Jeannie's and Aunt Nell's underpants from their dresser drawers and destroyed them. His father should have known then that there was a problem, but I don't think he paid Robert Wayne much attention except to berate him and or that he even much cared if something was wrong.

8. When Robert Wayne's grandfather died things got much worse. Robert's own mother said he was just a mean individual. My niece Glenda Sue ran off and got married, even though she was only a teenager herself. I remember her telling me years later that she would never



have done it but when her grandfather died, she had to get away from her father. I imagine when she left and there was nobody else for Robert to beat on, Robert Wayne felt the full force of his anger and hatefulness.

9. As Robert Wayne grew into a teenager and then a man, I didn't see him very often. He married at a young age and fathered a son, Scotty, who he got custody of when his marriage ended. While Robert Wayne worked on the boats, Scotty stayed on the farm with his great-grandmother and Robert where he was mistreated just as his father had been. Now that Scotty is grown, he and his grandfather Robert hardly speak to each other.

10. I find it hard to believe that my nephew Robert Wayne did all the things that the District Attorney said he did in this crime. I never knew Robert Wayne to be mean or cruel, even though he was certainly treated that way growing up. I can't help but feel that if only his father had showed him some love and attention instead of the abuse he heaped on him, maybe Robert Wayne wouldn't be on Death Row today.

11. I've never been contacted before by any of Robert Wayne's attorneys, but if I had, I would have spoken with them freely about Robert Wayne's life and I certainly would have gone to court and told the jury everything I knew and asked them to spare his life.

Further affiant sayeth naught.

/s/ Mable Schumacher
Mable Schumacher

Sworn to and subscribed before me this 27th day of September, 1990

/s/ Carol Hendrix
NOTARY PUBLIC

My commission expires: Aug. 30, 1994

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STATE OF LOUISIANA

PARISH OF JEFFERSON

Affidavit of Diane Thibodeaux

1. My name is Diane Thibodeaux and I am a resident of Jefferson Parish, Louisiana. I have lived in Gretna, Louisiana all my life.

2. I have known Cynthia Shano Schoennagel since we were young. We are very close friends – we call each other cousins. Whenever Cindy has any trouble, she heads over to my house.

3. I knew Cindy back in 1979 when she and Robert Sawyer were living together. The two of them and her boys, Wayne and Troy, stayed with me in my house for a one month period, so I got to know Bobby pretty well. Bobby was kind to Cindy and kind to the boys. I never saw Bobby mistreat the boys in any way, and they quickly became very attached to him. They called him "Daddy." When the four of them went on a trip to Memphis, Tennessee, where Bobby's family lived, I allowed my 15-year-old daughter to go along with them. I knew I could trust Bobby to take care of her, and he did. She had a great time – Bobby even took them all to see Elvis Presley's mansion.

4. I was also very close to Wayne and Troy, Cindy's two boys. From the time they were born, I took care of them whenever Cindy needed me to. They called me "Nanny," and played with my younger children, who are about their same age. Cindy had an older child, Stacey, who she never raised. Cindy's sister, Sylvia Champagne,

had taken her in at her home and Stacey never returned to live with her real mother. Because she had lost Stacey, Cindy was always very afraid of losing the boys.

5. In 1979, on the day the girl was beaten up so badly that she later died, Cindy came to my house with Wayne and Troy. She was white as a ghost, shaking, and upset. She told me what had happened and said "Troy's not right, Diane, help me." Troy wasn't right – he was all doped up. His eyes looked like glass and he looked like he didn't know anyone. We didn't know what to do. I gave Troy soup and even gave him coffee to try to bring him out of it. It took us 3-4 days to get him right again.

6. Cindy told me that a man named Chuck Lane had been over and that he and the girl were drinking. She though the girl or Chuck might have had drugs. She went out for a while and when she left the house, everything was okay. When she came back, there was a lot of wine (MD 20/20) there. Cindy said Bobby grabbed her and told her to take the kids and get in the back room and stay there or she would be next. Cindy said she didn't know how to take that. She didn't know if Bobby meant to save her or hurt her. But Cindy said she stayed in the back room until her sister and her sister's son Tommy drove up, and then she yelled to her sister and that's how she got out.

7. Little Wayne, who was four at the time, saw what happened. He started talking about it. I was present when a plain clothes policeman came over to Cindy's mother's house and talked to Wayne. When the policeman came in, Wayne saw his gun in a shoulder holster and reacted very strongly to it. He wouldn't go near the



policeman and would only talk to me. Cindy sat on the couch with the policeman and I sat in the armchair across from them. Wayne stayed with me. He told us that there was a man with a gun and that "they" took stuff in a "blue and yellow can" and poured into the "shiny thing you put cigarettes in." Wayne said the man stood over the girl and "they" put it on her. Then it "went poof."

8. Wayne kept saying "they," so I asked him if Daddy did that. (Wayne called Bobby Sawyer "Daddy.") Wayne said no, "Daddy tried to help the lady" and he showed us with his hand how the man slapped Bobby back. Wayne said, "Daddy fell into the chair, like this," and he showed us how Bobby fell back into the chair. He said that there was another man there who left in a car before Cindy came back. He said it was him and the other man who had done it.

9. The policeman took notes about what Wayne said. Then Wayne showed us where the "shiny thing" was – in the trash. The policeman went through the trash and found the bottom half of a cigarette holder, the girl's panties, two or three empty bottles of MD 20/20, and a can of lighter fluid.

10. I know that Cindy went to court for Bobby's trial. I don't know what she said. I have been told that she gave a different story. That doesn't surprise me – Cindy says different things at different times. When an article came out about the trial, Cindy showed it to me and said she hadn't said what the article said she said.

11. I believed what Wayne told us, especially when we found everything in the trash. It was just what Wayne had said it would be. I never got involved because my

husband told me not to. I don't want Chuck Lane coming after me. I prefer not to have address known because of Chuck Lane.

Further affiant sayeth naught.

/s/ Diane E. Thibodeaux
Diane E. Thibodeaux
Jefferson Parish, Louisiana

Sworn to and subscribed before me on
this the 25th day of October, 1990.

/s/ illegible
Notary Public

My commission expires: April 91

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State of Louisiana

Parish of St. Bernard

## AFFIDAVIT OF CONRAD WYMAN

Conrad Wyman, after being duly sworn did say:

1. My name is Conrad Wyman. I am a resident of St. Bernard Parish and am over eighteen years old. I have known Cindy Shano for about thirteen years.

2. I first met Cindy at the Monaco lounge on the Westbank in 1977. I remember it was her birthday and she was in there with her mother, Bertha. The three of us drank together all night.

3. I began dating Cindy and eventually moved in with her. I felt sorry for her and her two kids, little Wayne and Troy. Cindy was real afraid of losing her kids because she had a daughter that her sister, Sylvia, was raising. The Welfare Department had arranged it so that Cindy could only visit the girl at her sister's house, she could never come over to Cindy's. Welfare was always coming around and checking up on little Wayne and Troy, one time twice in one week. Cindy would cry and get upset and shaking after they'd come around. .

4. I often though if it wasn't for me being around, the kids would have been better off away from Cindy. She hit them too much. Cindy drank a lot and both she and her mother (who she lived with) claimed to be sick all of the time and were always going to different doctors for prescriptions. Cindy had a whole suitcase full of pills that she would take. She never put food on the table, or kept the kids clean. Even though she was getting Welfare, she

never had money to buy them clothes, or diapers. I bought them the things they needed and when I was off the boat, I would cook for them too.

5. I worked on the boats as a deckhand and I would go out on the river for two weeks and be off for one. While I was out, Cindy would go and hang out in the bars around Gretna and Westwego. My friends would tell me they saw her in the Monaco or the Hourglass or the Sahara almost every night drinking with whoever was in there buying that night.

6. I worked on some of the same boats as Charles Lane, but I knew him as Chuck. I also knew him from going to the same bars as me and Cindy. I know that Cindy and Chuck Lane knew each other too.

7. Cindy was like two different people sometimes, okay one minute and crazy the next. The police were always out at her house for one thing or another with her or her mother. I remember two of the police officers who came out a lot were Officers Giroir and Folse. They would make a report and never follow up on it.

8. In 1978, Cindy and I broke up and I didn't see her again until early 1980 after the woman had been killed at her house. I remember sitting on Cindy's front porch with her. I just happened to be passing by and saw her with a friend of mine, so I stopped to chat. She told me about the killing. She said that the woman had been stabbed with an ice-pick, her nipples had been cut off, and that she was set on fire.



9. Cindy told me that the two men who did it hadn't gone to trial yet but when they did, she would be testifying against them. She said the prosecutor wanted to charge here with the crime, but that she made a deal that if she would testify against both of them she would not be prosecuted. She said she was afraid she was going to lose her kids if she didn't go along with them.

10. I have only seen Cindy a couple of times since that day, but each time she has mentioned the killing. Its like it is always on her mind.

Further Affiant Sayeth Naught

/s/ Conrad Wyman
Conrad Wyman

Sworn to and subscribed before me this
9th day of November, 1990

/s/ illegible
NOTARY PUBLIC

My commission is for life

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STATE OF LOUISIANA

PARISH OF JEFFERSON

Affidavit of Sharon Deshotel

1. My name is Sharon Deshotel and I am a resident of Jefferson Parish, Louisiana. I am a head injury technician. I have known Cynthia Shano Schoennagel and her husband Mervin for the past seven years. My husband and I get together with them from time to time.

2. I did not know Cindy in 1979, when the babysitter was murdered in her house, but she has talked to me about the incident. On many occasions over the years, as recently as last month, Cindy has explained that she did not get in trouble for what happened because she turned state's evidence. She lives in fear of the men getting out of prison and coming after her. I have never doubted that Cindy did turn state's evidence because I know that she is well-connected to the mayor and to police in Gretna.

3. When Cindy talks about what happened that day, she tell [sic] different stories at different times. Sometimes she says she wasn't there at all, that everyone was drinking and she left to go do something. Sometimes she describes all kinds of horrible things that the men did to that woman, like cutting her nipples off, or using a hammer and icepick to rape her and then raping her themselves. I have often wondered why she would leave the house when her two children were there with everyone drinking. If she were there, I don't understand shy she couldn't at least have opened up a window and screamed, or gotten out of it. I have been in her house, and it wouldn't be hard.



4. I have been told that a jury believed what Cindy told them about what happened that day. As far as I'm concerned, based on all the things Cindy has said to me at various times, no one should go to prison based on what Cindy says. She changes it from day to day, and I know she turned state's evidence in order to save herself. That's the one part of the story that never changes.

5. Cindy seems to be haunted with guilt about the murder that occurred in her house. She falls apart whenever articles appear in the paper about it. Since September of this year, she has been much more affected than usual. She is very nervous about being subpoenaed to court again. Recently, there was an article in the paper with a big picture that had to do with Robert Sawyer. The next weekend, we all went on a fishing trip. Cindy went off on her own for about 2½ hours and just cried, the whole time. It had something to do with the article.

6. Just last week, Cindy showed up at my door at 2:00 a.m. and asked me to take her to the hospital. She was in terrible shape. On the way to the hospital she was talking out of her head about being subpoenaed to court and about the men coming after her. I don't think it is just bad memories of what happened either. It seems to go much deeper than that.

7. Knowing Cindy, I can say that she really seems to have two personalities. Sometimes she comes off sweet as can be, but other times she is calculating and mean. You never quite know what she is up to. I could imagine her being involved in the crime and I could also imagine her lying to protect herself. I think that that is what is causing

her so much trouble right now, like I said, a guilty conscience.

Further affiant sayeth naught.

/s/ Sharon Deshotel
Sharon Deshotel
Jefferson Parish, Louisiana

Sworn to and subscribed before me on
this the 25th day of October, 1990.

/s/ illegible
Notary Public

My commission expires: April 91

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STATE OF LOUISIANA
PARISH OF JEFFERSON

AFFIDAVIT OF THOMAS P. CHAMPAGNE, SR.

Thomas P. Champagne, Sr., after being duly sworn did say:

1. My name is Thomas Champagne and I am a resident of Jefferson Parish, Louisiana. I am Sylvia and Peter Champagne's son and Cynthia Shano Shoennagle's nephew.

2. I knew Fran Arwood prior to her murder in September, 1979. I had just seen her the previous day. My mother and I found her in Cynthia's house. Cynthia, Bobby Sawyer, Chuck Lane, and Cynthia's two kids, Wayne and Troy, were also in the house. I testified at the trials of Chuck Lane and Bobby Sawyer.

3. After the police arrived on the scene they took Bobby Sawyer out back and I saw one officer hit him. I didn't see what happened after that because other officers told us to go back around the front of the house and we did. At the time, I didn't much are what they did to him. I had already tried to go after him myself, but by mother wouldn't let me.

4. My mother, Cynthia, and I stayed outside the house for quite a while. I remember it took me a long time to calm down from what I'd seen. The police asked us questions and other police officers were inside the house. It wasn't until around dark that Cynthia, my mother and I all went to the station, where police took our statements. While we were outside the house a lot of

police were there. I would estimate that there at least 10 or more officers, counting both the uniform officers and plain clothes detectives.

5. I never talked to Cynthia directly about what happened in that house. She wasn't making much sense the day it happened. Later, she just talked to my mother. I've always felt she must have been involved. My mother, told me some of what Cynthia said and it doesn't add up to me. Cynthia told my mother that she was locked in the back room, and there aren't any locks on that door. She also told my mother that the men let her out to go get something, but then she had to go right back to the house. I don't understand that, either.

6. My mother told me that Cynthia had a deal to testify against Lane and Sawyer so she wouldn't get in trouble herself. That makes more sense to me than any of the stories I heard.

Further affiant sayeth naught.

/s/ Thomas P. Champagne, Sr.
Thomas P. Champagne, Sr.
Jefferson Parish, Louisiana

Sworn to and subscribed before me on
this the 4th day of November, 1990.

/s/ illegible
Notary Public

My commission expires:

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STATE OF LOUISIANA

PARISH OF JEFFERSON

AFFIDAVIT OF PETER J. CHAMPAGNE, JR.

Peter J. Champagne, Jr., after being duly sworn did say:

1. My name is Peter Champagne and I am a resident of Jefferson Parish. Sylvia Champagne was my wife. She passed away on February 11, 1982, just before Valentine's Day.

2. My wife testified at the trials of Bobby Sawyer and the other man who was accused of killing the girl over at the Shanos' house, on Porter Street. All I know about what happened is what my wife told me. I myself never got involved in anything that was going on.

3. My wife told me that Cynthia Shano made a deal to testify against the two men in exchange for not being arrested for the crime. My wife told me that she and Cynthia had a meeting with the D.A. I think my wife knew the D.A. She also knew a lot of police. We have relatives who are on the Gretna police force.

4. I knew Bobby Swayer before he was arrested. I never saw him mistreat either Cynthia or the children. He looked like he could have temper, but I only say that from his looks. Sometimes you can tell by the way a man carries himself. It surprised me that he was involved in this kind of crime.

5. I prefer not to comment on anything I have heard about what happened on that day and what I think about

it. I don't see Cynthia Shano anymore unless I happen to run into her, but she is still my relative.

Further affiant sayeth naught.

/s/ Peter J. Champagne, Jr.
Peter J. Champagne, Jr.
Jefferson Parish, Louisiana

Sworn to and subscribed before me on
this the 4th day of November, 1990.

/s/ illegible
Notary Public

My commission expires:

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State of Florida

County of Escambia

## AFFIDAVIT OF JERRY WHITE

1. My name is Jerry White. I am a resident of Escambia County and am over eighteen years of age. Robert Wayne Sawyer is by brother-in-law. I am married to his oldest sister Glenda.

2. I will never forget Robert Sawyer's trial. It seemed like a nightmare with no one trying to help Robert and all the cards stacked against him. The D.A. Phillip Boudousque wanted the death penalty at any cost for Robert and even though he knew Cynthia Shano was guilty, he didn't care. At one point we were standing outside the courtroom on a break and Phillip Boudousque said to me that he knew Cynthia Shano was guilty but two ducks (Sawyer and Lane) were better than none. Now I am a Vietnam Veteran. I fought in the war because that was what had to be done and I know and respect the fact that everyone has a job to do. However, I have been extremely bothered over the last ten years about the railroading job District Attorney Phillip Boudousque did on Robert Sawyer while Cynthia Shano walked free.

3. When Robert was arrested, we began talking with Cynthia Shano about what happened. We had several phone conversations with her in which she stated that Robert was innocent, had been knocked out drunk when it happened, that she and the kids loved him and were going to stand behind him. When Frances Arwood died, she completely changed her tune. The last time I ever spoke with her was either the day Ms. Arwood died or

the day after. She told me that the D.A. had instructed her to never speak with us again. She also said, "I'm not going down for nobody. I'm going to cover my ass, no matter what it takes. I have this friend B.J. Miller who's going to help me."

4. I believe that brother-in-law didn't stand a chance from the beginning. When I first talked with his attorney, James Weidner on the telephone about two weeks before the trial, he told me that Robert had been offered a life sentence but had turned it down. I told that Robert had problems understanding things and maybe he didn't understand the plea bargain and could my wife and I explain it to him again. Weidner told me that it was too late and the life sentence was no longer available.

5. James Weidner didn't ask me about what I meant about Robert not understanding things too well. In fact, he didn't ask me anything about Robert or his background. We talked for about fifteen minutes or so that day and several days later, my wife and I got a letter from him asking us to come to the trial. I spoke with him once more by telephone only to let him know that I needed a subpoena issued so that the military would let me come to court. When we met with him the night before the trial, we only spent an hour and a half with him. Even then, I asked him about the plea bargain and couldn't we approach the D.A. and ask him to offer it again after we spoke with Robert. He told me that there was no way to change things, that the wheels were rolling and we were going to trial. It was too late for a plea bargain now.



Further Affiant Sayeth Naught

/s/ Jerry White
Jerry White

Sworn to and subscribed before me this
20th day of October, 1990

/s/ illegible
Notary Public

My commission expires:
My commission Expires April 28, 1991

STATE OF LOUISIANA

PARISH OF JEFFERSON

Affidavit of Samuel Shano

1. My name is Samuel Shano, Jr. and I am a resident of Jefferson Parish, Louisiana. I have lived in Jefferson Parish all my life.

2. Cynthia Shano Shoennagel is my ex-sister-in-law. She was married to my brother, Wayne Shano. I have known Cindy since we were both young. I used to have relatives who lived in the neighborhood of her mother's house, on 928 Porter Street in Gretna, and so I spent a lot of time in that area.

3. I am familiar with the events that led to the conviction of Robert Sawyer for the first degree murder of Frances Arwood. In 1979 my nephews, Wayne Shano, Jr. and Troy, were living with Cindy on Porter Street, and were present when the crime occurred. At the time, they were four and two years old. The boys have not lived with their mother since 1981, when they were taken from her and placed in a foster home. Not long after, my brother gained temporary custody of his children. The following year, my brother was awarded full custody of his children.

4. Following Frances Arwood's death, Wayne continued to have nightmares about whatever he witnesses that day. My brother and mother took him to see a psychiatrist for a while. Since then, apparently the memories have faded. When Wayne talks about his early childhood (he is now 15 years old), it seems to all blur



together. He remembers some friends in the neighborhood, a few car accidents he got into with his mother, and some of her boyfriends, but other than that, I don't think he has a clear memory of what went on in that house.

5. It is common knowledge in the area that Cindy testified against Charles Lane and Robert Sawyer in exchange for not being prosecuted herself. People know that Cindy was in and out of her house all morning on the day the crime occurred and that she never asked anyone for any help. The checker working at Ripp's, a local store up the street from her house, saw her two or three times that morning buying cigarettes and wine. She also went into a bar near there at one point. People who know Cindy know that she could easily be involved in something like that.

6. I have been told by two different people, on two different occasions, that Cindy told them she turned state's evidence. A man I know only by the name of Conrad, who was Cindy's boyfriend before the murder and then again after the murder for a short period of time, told me that when he and Cindy were on good terms, she told him she had turned state's evidence. A woman named Sharon, who is a friend of Cindy's and who I see occasionally, also told me that Cindy says she turned state's evidence.

7. The fact that she was given the opportunity to turn state's evidence has always made sense to me. Some members of Cindy's family are very well-connected with the Gretna police. It would not surprise me at all that they gave her the chance to work out a deal. Sawyer and

Lane weren't from around here and couldn't have pulled those kinds of connections.

Further affiant sayeth naught.

/s/ Samuel Shano
Samuel Shano

Sworn to and subscribed before me on
this the 25th day of October, 1990.

/s/ illegible
Notary Public

My commission expires: April 91

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State of Louisiana

Parish of Jefferson

## AFFIDAVIT OF BETTY SHANO

1. My name is Betty Shano. I am a resident of Jefferson Parish and am over eighteen years of age. My son, Wayne Joseph Shano, Sr. was married to Cynthia Shano.

2. I've known Cynthia Shano ever since she was a little girl. My husband's mother lived a block away from Cynthia's house and his aunt, Louise Riley, lived across the street. I was commonly known around the neighborhood that Cynthia's mother was an alcoholic and popped a lot of prescription pills. Maybe it was because she was around them so much, but by the time Cynthia was a teenager, she was taking a lot of prescription drugs.

3. My son got involved with Cynthia when he was only eighteen years old. He had been dating her for about six weeks when she told that she was pregnant from him and wanted to get married. I remembered how much Cynthia used to connive and lie when she was younger and I told my son not to marry her because I didn't believe she was pregnant. My son was not a responsible person and he wouldn't listen to me. He married her anyway, but I was right. Later, Cynthia said she'd had a miscarriage. That was just how Cynthia was, she would tell you anything to get what she wanted even if it was a bold-faced lie.

4. Eventually, Cynthia had my two grandsons, Wayne, Jr. and Troy. From birth, Cynthia was not a very living mother to them. She neglected and physically abused them. She had another child, a daughter, from a previous

relationship that she had treated the same was. [Illegible Words] the girl away when she was just a baby and raised her. The child even took Sylvia's last name. She was downright mean to my son as well and by 1977, Cynthia and my son had separated. Cynthia had custody of the two children.

5. The first time that Cynthia Shano was reported for abusing and neglecting Wayne, Jr. and Troy was in the winter of 1977. An old friend of our family lived across the street from Cynthia's mother's house on Porter Street. She called me one afternoon to let me know that Cynthia and the kids were living in an abandoned house on the corner of Porter and Hancock Streets. There was no running water or electricity at the house and the children had no coats or sweaters, just their little short sleeve shirts and pants. By the time the police got out there, Cynthia got the kids over to her mother's and lied to the officer who came out to investigate. A report was filed and the Welfare Department began to keep an eye on her.

6. By 1981, my grandchildren had been through hell. They had seen whatever went on in that house the day Frances Arwood died, and Wayne, Jr. had nightmares about that for a long time. The boys were constantly shuttled from one house to the next. Whenever I saw them, they looked underfed and not cared for. She would leave them for days and weeks at a time with her sick mother who couldn't hardly get out of bed much less take care of two little boys. It was one of these times, when she left, that the Welfare Department came in and took the boys.



7. Cynthia had left Wayne, Jr. and Troy with her mother for nearly a week when the home health-care nurse came to take care of her. The children were running wild, unfed and barely clothed. The nurse called the Welfare and the children were immediately placed into the custody of the state and in a foster home. After being investigated by the children's social worker, my son got custody of the boys on June 26, 1981 with Cynthia having twelve hour visitations on Sundays.

8. Cynthia had only taken the boys for a couple of Sundays when they came back all beaten and bruised. They were filthy dirty and said they hadn't had anything to eat all day. We took pictures of their bruises and gave them to the social worker, Birdie Johnson. She went to court and got the Judge to order supervised visitation at the Welfare Office and Cynthia never showed up. Then he ordered that she be allowed to have supervised visitations with the boys at our house, but Cynthia never came to see her children after that either. My son was awarded permanent custody in 1982.

9. Through the courts we were able to get psychological help for Wayne, Jr.. [sic] Troy never seemed to remember what happened when Frances Arwood was killed, But Wayne, Jr. continued to have nightmares. The psychologist saw Wayne, Jr. for awhile and told us that eventually he would put the memories behind him. Recently I asked Wayne, Jr. about it and he seems to have forgotten the details of that day.

10. I've often wondered about the killing of Frances Arwood and what part Cynthia had in it. The details of the crime that I heard sound like something Cynthia

would be involved in, mean and cruel. She was that type of person. The other thing that has made me wonder is what my sister-in-law told me about the day the crime happened.

11. My sister-in-law worked at Ripp's Supermarket which was just down the street from Cynthia's on Hancock Street. She told me that she saw Cynthia two or three times the morning of the crime when she came into the store to buy liquor. She said she even asked Cynthia that day how she and the boys were doing and she said they were all doing alright. She said that the last time she saw Cynthia in the store that day was about a half an hour to forty-five minutes before they heard the ambulances going to her house.

12. I have heard that reason Cynthia didn't get charged with the murder was because she turned State's evidence. I wasn't at the trial so I really don't know what she said, but I do know that Cynthia presents herself as such a pathetic creature that people tend to feel sorry for her and believe what she tells them. I also know that her family had a lot of friends on the Gretna Police Force. [Illegible Words] It wouldn't surprise me for Cynthia to say anything she needed to keep herself out of trouble.

Further Affiant Sayeth Naught

/s/ Mrs. Betty Shano
Betty Shano

Sworn to and subscribed before me
this 25th day of October, 1990

/s/ illegible
Notary Public

My commission is for life.

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## SUPREME COURT OF THE UNITED STATES

No. 91-6382

Robert Wayne Sawyer,

Petitioner

v.

John P. Whitley, Warden

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 14, 1991

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